

The George Washington University Law School  
2000 H Street, NW  
Washington, DC 20052

August 21, 2020

The Honorable Elizabeth Hanes  
Spottswood W. Robinson III & Robert R. Merhige, Jr.  
U.S. Courthouse  
701 East Broad Street, 5th Floor  
Richmond, VA 23219

Dear Judge Hanes:

I write in strong support of the clerkship application of Rosalia Quam-Wickham. I had the pleasure of teaching Ms. Quam-Wickham throughout her first year of law school as the adjunct professor for her fall Legal Research & Writing and spring Introduction to Advocacy courses. Beyond teaching those classes, I am an experienced attorney, having served as a state and federal public defender before undertaking my current policy-oriented job at the United States Sentencing Commission. As a former judicial clerk, I am confident in saying that Ms. Quam-Wickham will make an excellent addition to any chambers staff.

Ms. Quam-Wickham is destined to be a superior attorney. Both courses for which I taught Ms. Quam-Wickham offered great insight into her abilities. Each course consisted of a small section of students, allowing for direct interaction with, and observation of, Ms. Quam-Wickham. Likewise, each course involved the submission of two legal documents, enabling a ground-level view of Ms. Quam-Wickham as she transitioned from new law student to talented advocate.

While Ms. Quam-Wickham began at a higher level than many of her peers, she still exhibited substantial growth throughout the year. By year's end, she was writing some of the best papers I have seen in three years of teaching and was able to present equally compelling oral arguments. I think highly enough of her abilities that I repeatedly implored my subsequent students to seek her out when having their work reviewed by the Law School's Writing Fellows. My students had nothing but glowing responses to working with her.

Beyond her sterling work product, Ms. Quam-Wickham is also a pleasure to work with. Given the timing of my courses—always in the first year of law school—I am quite used to the complaints and frustration that most first-year students are prone to expressing. Ms. Quam-Wickham, however, never joined that chorus. In every class, Ms. Quam-Wickham was level-headed and amicable, always willing to respond to difficulties with improvements and good humor. Her personality will serve her well in the close confines of a chambers staff.

I have no doubt that Ms. Quam-Wickham will be a great legal talent and an asset in your chambers. If you have any further questions, please do not hesitate to contact me.

Sincerely,

Max S. Wolson  
Professorial Lecturer in Law  
mwolson@law.gwu.edu

Max Wolson - mwolson@law.gwu.edu

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Washington, DC 20052

August 21, 2020

The Honorable Elizabeth Hanes  
Spottswood W. Robinson III & Robert R. Merhige, Jr.  
U.S. Courthouse  
701 East Broad Street, 5th Floor  
Richmond, VA 23219

Dear Judge Hanes:

I am writing to recommend with great enthusiasm Rosalia Quam-Wickham (Rose) for a clerkship in your chambers. I know Rose in two capacities.

First, after success in two competitive search processes, Rose was accepted as a Writing Fellow in her 2L year and then as a Dean's Fellow in this, her 3L year. Both positions entail great responsibility in the LRW Program. As a Writing Fellow, Rose conducted one-on-one writing conferences with law students of all levels who seek out our Writing Center for assistance on 1L assignments and upper-level papers. I did not directly supervise Rose, but the professor who did had the following to say:

Rose was one of our strongest Writing Fellows in part because she was prepared almost immediately to handle scholarly writing drafts in addition to 1L and LL.M. drafts. She is mature in handling her interactions with others and had a number of students who made repeated appointments with her. I highly recommended her when she applied to be a Dean's Fellow this year.

We accepted Rose as a Dean's Fellow, or teaching assistant, in the 1L program this year, and she has continued to perform spectacularly, at the very top of her class of 45 Dean's Fellows. In that role, she mentors and teaches a group of approximately 12 1L students. She covers research techniques, citation intricacies, and is a superb mentor to her students. Rose's skills are very strong, and her warm personality is a definite plus.

Second, Rose earned a top grade in my Law and Literature seminar last semester. She had insightful things to say about every text that we read. My Law and Literature class is perceived by many students to be "fun," but the reality is that the close-reading of texts is its primary agenda. Rose offered thoughtful, mature comments in virtually every class. She has a wonderfully calm and intellectual demeanor, and I was always thrilled when I saw her hand raised. She wrote a fantastic, sophisticated paper called "Moral Theory, Law, Literature: How the Use of Imagination Can Lead to Better Systems of Justice." It was my favorite paper of the 21-person class – both in terms of her analysis and the style of her prose – hence her A grade.

I recommend Rose highly and without reservation. Please let me know if you have any questions or would like to talk further.

Very sincerely,

/s/

Christy H. DeSanctis  
Professor of Legal Research & Writing  
Director of the Legal Research & Writing Program

Christy DeSanctis - [cdsanctis@law.gwu.edu](mailto:cdsanctis@law.gwu.edu)

**ROSALIA QUAM-WICKHAM**

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(562) 310-5088 • rquam@law.gwu.edu

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Writing Sample

The attached writing sample is an excerpt of a Memorandum in Opposition to Plaintiffs' Motion for Sanctions that I prepared as part of an Electronic Discovery and Evidence class during my third year of law school. Due to the length of the original memorandum, only the Legal Standard and first portion of the Argument are included. This memorandum is my own work product and has not been edited by any other person.

For the purposes of this assignment, I represented a state Department of Public Health ("DPH") and employees of DPH, Doctors Jones and Dailey (collectively "Defendants"). The case arose from the alleged unlawful termination of Plaintiffs, who had been employed by DPH as rural medical personnel and supervised by Doctors Jones and Dailey, in November of 2016. Plaintiffs sued Defendants in February 2017 in federal court. Subsequently, Plaintiffs filed a Motion for Sanctions alleging that Defendants were responsible for both the negligent and intentional spoliation of electronically stored information ("ESI") based on an unsuccessful migration of data that had been stored in an experimental system, SharePoint, in December 2016. This was an issue of first impression before the court.

In the following excerpt, I analyze the threshold questions for ESI spoliation as interpreted by courts under the Federal Rule of Civil Procedure 37(e) ("Rule 37(e)") and thus whether sanctions of any severity are appropriate. A copy of the entire memorandum is available upon request.

## I. LEGAL STANDARD

Spoliation is the “destruction or material alteration of evidence, or the failure to preserve [evidence] properly” when litigation is either pending or reasonably foreseeable. *Zubulake v. UBS Warburg LLC*, 220 F.R.D. 212, 216 (S.D.N.Y. 2003). When spoliation of electronically stored information (“ESI”) occurs, the Federal Rule of Civil Procedure 37(e) (“Rule 37(e)”) — and the inherent powers of the court — authorize sanctions. Fed. R. Civ. P. 37(e); *Silvestri v. Gen. Motors Corp.*, 271 F.3d 583, 590 (4th Cir. 2001) (citing *Chambers v. NASCO, Inc.*, 501 U.S. 32, 44–45 (1991)) (explaining that the right to impose sanctions is tied to the court’s inherent right to control litigation and the judicial process). For Rule 37(e) sanctions to be proper, the moving party must establish that there was a duty to preserve and the opposing party either: (i) failed to take reasonable steps to preserve the evidence which resulted in prejudice to the moving party, or (ii) acted with the intent to deprive another party of the use of the information. Fed. R. Civ. P. 37(e).

While there is no absolute consensus concerning the burden of proof for ESI spoliation, courts often weigh the relief sought and require the moving party to establish spoliation by a preponderance of the evidence when the failure to take reasonable steps is alleged, and by the clear and convincing standard when the party is accused of intentional spoliation. *See Steves & Sons, Inc. v. JELD-WEN*, 327 F.R.D. 96, 104–05 (E.D. Va. 2018) (explaining that courts in the Fourth Circuit generally apply a higher standard for harsher sanctions); *see also Shepherd v. Am. Broad. Co., Inc.*, 62 F.3d 1469, 1476 (D.C. Cir. 1995) (explaining that the standard of proof is “a choice about where to place the risk [of] error” and that higher standards of proof are particularly appropriate for decisions that are “fundamentally punitive.”).

## II. ARGUMENT

The severity of sanctions for ESI spoliation under Rule 37(e) depends on the responsible party's state of mind. Fed. R. Civ. P. 37(e); *see also Schmalz v. Village of North Riverside*, No. 13 C 8012, 2018 WL 1704109, at \*7 (N.D. Ill. Mar. 23, 2018) (explaining that Rule 37(e)(1) imposes measures “no greater than necessary” to cure prejudice from mere negligent loss, while 37(e)(2) imposes more severe sanctions for intentional spoliation). Before examining a party's state of mind, a court must first answer certain threshold questions to determine whether spoliation occurred at all. *Living Color Enters., Inc. v. New Era Acquaculture, Ltd.*, Case No. 14-cv-62216, 2016 WL 1105297, at \*4 (S.D. Fla. Mar. 22, 2016).

If the threshold questions are answered affirmatively, then the inquiry moves to which subsection of Rule 37(e) governs by examining whether the spoliation was done out of mere negligence or whether the party acted with intent to destroy the ESI. *See id.* at \*4–5 (examining the three threshold questions before determining which Rule 37(e) subsection governs). If any of the threshold questions are answered in the negative, the inquiry ends and the motion for sanctions must be denied. *See Steves & Sons*, 327 F.R.D. at 109 (denying sanctions when plaintiff failed to establish that all threshold questions were answered affirmatively).

### A. The Threshold Requirements of Rule 37(e) for Sanctions or Measures Have Not Been Met.

While individual courts sometimes articulate the threshold questions differently, the primary inquiries remain the same: (i) if there was a duty to preserve the allegedly spoliated ESI, (ii) if reasonable steps were taken by the party to avoid spoliation, and (iii) whether the ESI was actually lost within the meaning of Rule 37(e). *Compare Living Color*, 2016 WL 1105297, at \*4–5 (articulating the threshold questions as three) *with Schmalz*, 2018 WL 1704109, at \*3

(splitting the last question into two parts: (i) whether the ESI had been lost, and (ii) whether the ESI could not be restored or replaced by additional discovery).

- i. DPH did not have a duty to preserve all requested ESI because litigation was not reasonably foreseeable in December 2016.*

Rule 37(e) incorporates the common law duty to preserve evidence in order to protect against spoliation. Fed. R. Civ. P. 37(e) advisory committee’s notes to 2015 amendment (explaining that Rule 37(e) does not create a new duty to preserve). This determination is an objective but “flexible, fact-specific standard” and considers two lines of inquiry: (i) at what point did the duty to preserve apply, and (ii) what specific information was required to be preserved. *Micron Tech., Inc. v. Rambus Inc.*, 645 F.3d 1311, 1320 (Fed. Cir. 2011) (citing *Fujitsu Ltd. v. Fed. Express Corp.*, 247 F.3d 423, 436 (2d Cir. 2001)); *see also Zubulake*, 220 F.R.D. at 216–17 (examining both when the duty to preserve attached and what information it covered). Reasonableness characterizes both the temporal and scope inquiries of the duty to preserve. *See Zubulake*, 220 F.R.D. at 216–17 (resolving that the duty is not meant to impose undue burdens on litigants).

The duty to preserve attaches when litigation is either currently pending or reasonably foreseeable and thus does not require the preservation of ESI when there is only “a mere existence of a potential claim or the distinct possibility of litigation.” *Micron Tech.*, 645 F.3d at 1320 (citing *Trask-Morton v. Motel 6 Operation LP*, 534 F.3d 672, 681–82 (7th Cir. 2008)). As this standard is objective, the subjective understandings of the parties are not dispositive – the duty to preserve is triggered if a reasonable party in the same factual circumstances would have reasonably foreseen litigation. *Id.*

Typically, courts find that litigation was reasonably foreseeable when there was a formal notice of impending litigation — such as filing a complaint or sending a demand letter — or

when parties have gone so far as to develop strategies for litigation based upon their anticipation of a legal dispute. *See id.* at 1321 (finding that litigation was reasonably foreseeable when corporate defendant in a patent dispute destroyed ESI as part of a “IP Litigation Activity” policy and when it was already on notice of potentially infringing activities); *Borum v. Brentwood Village, LLC*, 332 F.R.D. 38, 45 (D.D.C. 2019) (finding the duty to preserve attached the day plaintiff filed a complaint alleging discriminatory housing practices by defendant); *Schmalz*, 2018 WL 1704109, at \*3 (stating the duty to preserve attached in a Section 1983 suit when defendants received a litigation hold letter four months after the alleged incident). The simple occurrence of an event for which there may eventually be a claim is not enough to make litigation reasonably foreseeable. *See Trask-Morton*, 534 F.3d at 681–82 (rejecting assertion that the duty to preserve attached immediately after incident giving rise to the claim and instead finding the duty attached 18 months later when plaintiff sent a demand letter).

Even once the duty to preserve is triggered, the preservation requirements only apply to information relevant to the case’s claims and defenses. *See Zubulake*, 220 F.R.D. at 217–18 (citing Fed. R. Civ. P. 26(b)(1)). Thus, instead of preserving “every shred of paper” — a requirement that would “cripple” large businesses and organizations — parties are required only to preserve discoverable information that they knew or reasonably should have known would be likely to be requested during discovery. *Id.* (finding that, in an employment discrimination and retaliation suit, defendants had a duty to preserve lost backup tapes that pertained both to a predetermined, relevant set of employees and a time period following plaintiff’s EEOC complaint).

In the instant case, litigation was not reasonably foreseeable and thus the duty to preserve did not attach until well after the ESI was allegedly lost during the unsuccessful SharePoint data

migration; DPH terminated Plaintiffs in November 2016 and the migration from SharePoint to DPH's new data management system occurred in December 2016. Unlike *Borum*, where the spoliation occurred a year and a half after a lawsuit was filed, litigation did not commence until after DPH stopped using SharePoint. 332 F.R.D. at 45. Nor was there any litigation hold or demand letter notifying DPH of potential litigation at the time, like in *Schmalz*, where defendant deleted text messages after plaintiff had sent a litigation hold letter. 2018 WL 1704109, at \*2–3. In fact, Plaintiffs made no affirmative indication of any intent to file a lawsuit nor did they make any attempt at all to notify DPH of impending litigation before they filed suit in February 2017.

Plaintiffs argue that, despite the lack of a formal litigation notice, DPH should have reasonably foreseen litigation at the time of Plaintiffs' termination from their positions in November 2016 and thus Defendants had a duty to preserve all information from SharePoint. This argument rests upon the assertion that there is always an inherent risk of litigation surrounding an employee's termination, especially when an employee had voiced their dissatisfaction with their employer as Plaintiffs had via SharePoint message boards. However, it is entirely unrealistic to expect that any party in the same factual circumstances as DPH could have reasonably foreseen litigation based solely upon this fact. Plaintiffs have offered virtually no evidence that DPH had already suspected litigation or had reason to believe a dispute existed by December 2016, unlike the circumstances in *Micron Technology*, where the party responsible for ESI spoliation had already developed a general litigation strategy for patent enforcement that included a document destruction policy. 645 F.3d at 1321–22. While it is true that Plaintiffs had criticized DPH's rural medical program via SharePoint message boards, SharePoint was a collaborative and dynamic system and had been intended to solicit critical feedback about the program's efficacy and efficiency from in-field medical professionals. DPH could not have

reasonably anticipated a lawsuit that rested, largely, on Plaintiffs' use of the technology for its intended purposes.

Instead, these circumstances are readily similar to those in *Trask-Morton*, where the court declined to find that the duty to preserve attached immediately following an incident where plaintiff sustained injuries while staying as a guest at a hotel and instead found that the duty to preserve only applied after the plaintiff sent a demand letter 18 months later. 534 F.3d at 681–82. Similarly, DPH could not have reasonably foreseen litigation based solely on Plaintiffs' termination, especially after DPH had already issued Plaintiffs unsatisfactory performance notices well before the separation. If Plaintiffs are correct in their assertion that employee termination is always inherently subject to litigation, and the duty to preserve attached immediately after the termination, *every* organization which had terminated an underperforming employee would be subject to the duty to preserve at the time of separation. Such requirement would be incongruous with the nature of the duty to preserve, which does not seek to impose undue burdens on parties.

Furthermore, much of the data which serves as the basis for Plaintiffs' motion for sanctions is outside of the scope of the duty to preserve. Plaintiffs assert that they were entitled to *all* of the raw data collected and stored in SharePoint, and thus any alleged SharePoint data losses are legitimate grounds for sanctions. However, DPH is a large government agency that carried out dozens of projects and programs that used SharePoint in some capacity. To assert not only that Plaintiffs are entitled to all the raw data from the rural medical program but also data from other, unrelated DPH projects is completely unjustifiable. These circumstances are not like *Zubulake*, where the court imposed sanctions after backup tapes containing specific, case-relevant communications were lost. 220 F.R.D. at 222. Plaintiffs instead ask this Court to

sanction DPH, at least in part, for alleged loss of information wholly irrelevant to both the rural medical program and Plaintiffs' termination from DPH — an unreasonable and groundless request, which this Court should refuse to entertain. Thus, because the duty to preserve is based upon reasonableness and because any rational party in DPH's circumstances at the time could not have reasonably anticipated litigation nor known that Plaintiffs would seek ESI entirely unrelated to this case, this Court should reject Plaintiffs' contention that the duty to preserve attached at the time of their termination from DPH and instead find that the duty attached when the complaint was filed in February 2017.

- ii. *Even if the duty to preserve applied to the requested ESI, DPH did not fail to take reasonable steps to preserve the information.*

Even once the duty to preserve is triggered, sanctions are only appropriate if ESI is lost due to a failure to take reasonable steps to preserve it. Fed. R. Civ. Pro. 37(e). A party has failed to take reasonable steps to preserve ESI if it has not “adhered to the expected norms that govern record preservation in litigation.” *Borum*, 332 F.R.D at 45. Expected norms of record preservation in litigation typically include the imposition of litigation holds — which includes the suspension of any routine document destruction policies — and compliance with counsel's directives and the party's own policies concerning information preservation. *See id.* at 45–46 (finding reasonable measures were not taken when a corporate defendant implemented a litigation hold only after complaint was filed and after multiple employees had deleted company emails); *Chan v. Triple 8 Palace, Inc.*, No. 03CIV6048(GEL)(JCF), 2005 WL 1925579, at \*6 (S.D.N.Y. Aug. 11, 2005) (finding a corporate litigant responsible for spoliation when it never informed its employees to cease routine document destruction policies once the duty to preserve was triggered); *Zubulake*, 220 F.R.D. at 218–19 (finding spoliation occurred when defendant's employees did not comply with its attorney's directives to maintain active electronic documents

pertaining to the case after plaintiff filed an EEOC charge nor did employees comply with the company's own internal policies to retain backup tapes for three years).

Here, even if this Court finds that the duty to preserve was attached when the SharePoint data migration took place, sanctions are still inappropriate because DPH did not fail to take reasonable steps to preserve the ESI. When DPH concluded that it would not be continuing with its SharePoint experiment, counsel for DPH advised DPH IT staff to retain as much information as possible and DPH IT staff complied with that directive to the best of their ability. While it is true that some of the raw data from SharePoint did not survive migration to the new data management system, the IT staff was able to preserve monthly "snapshots," or aggregate data that show the rural medical program's general functioning, which provide operational information for the program spanning the entirety of Plaintiffs' tenure at DPH. These circumstances are not like *Borum*, where the responsible party simply failed to take any steps to prevent its employees destroying data — even following a complaint filing. 332 F.R.D. at 45–46. Nor is this case like *Chan*, where the corporate defendant failed to notify its employees to suspend any document destruction policies and to retain information during active litigation. 2005 WL 1925579, at \*5. Instead, DPH counsel immediately issued a litigation hold, which was fully complied with, once it became clear that litigation was pending. In fact, DPH also took steps to ensure that relevant information from both Doctors Jones and Dailey's personal laptops were preserved by immediately instructing Jones and Dailey to deliver the laptops to DPH IT staff for hard disk imaging.

Plaintiffs argue that, like in *Zubulake* where employees did not comply with their own counsel's directives, DPH failed to comply with expected norms of record preservation in litigation because DPH counsel instructed IT staff to preserve as much data as possible from

SharePoint during the migration in December 2016, and data was still lost. 220 F.R.D. at 218–19. However, this case is immediately distinguishable from *Zubulake* because DPH counsel did not direct IT Staff to preserve information in anticipation of litigation, but rather leaned on DPH’s general practices to preserve information in order to improve the efficacy of the program, whereas the counsel in *Zubulake* specifically directed that backup tapes be preserved for litigation following an EEOC charge. *Id.* A directive from corporate counsel acting in an official capacity to preserve information for litigation and a nonlegal request from an attorney to preserve information in order to improve a statewide health program are simply incomparable. Thus, because DPH did not fail to take reasonable steps to preserve ESI and in fact did comply with all expected norms of record preservation, sanctions would be improper in this case.

iii. *The ESI is not lost within the meaning of Rule 37(e).*

Sanctions cannot be imposed under Rule 37(e) unless the ESI has been irremediably “lost.” *Living Color*, 2016 WL 1105297, at \*5. ESI is considered lost only when it cannot be “restored or replaced through other means of discovery.” *Id.*; see also *Borum*, 332 F.R.D. at 46 (explaining that deleted emails were lost when no other sources or custodians of the ESI could produce the information); *Schmalz*, 2018 WL 1704109, at \*3 (stating that text messages from replaced cellular phones were lost when defendants were given opportunities to restore them but ultimately failed). If information is potentially in the possession a different ESI custodian, parties moving for sanctions must first make good-faith efforts to explore alternative methods of obtaining the requested ESI before sanctions can be imposed. See *Steves & Sons*, 327 F.R.D. at 109 (refusing to impose sanctions for deleted emails and other documents when moving party failed to take an “obvious step” of seeking forensic examinations of hard drives prior to its motion for sanctions).

Here, a substantial portion of the allegedly lost data still exists for the period relevant to Plaintiffs' employment. Unlike *Schmalz*, where all ESI was destroyed when defendants were not able to produce the content of deleted text messages from any other source, DPH is able to produce much of the requested information. 2018 WL 170109, at \*3. First, the summaries preserved by IT staff include information sufficient to evaluate the overall quality of Plaintiffs' job performance while in the field, including the number of individuals treated and their basic medical information for both patients treated by Plaintiffs and those treated by other rural medical professionals. While it is true that some data was omitted from these summaries, the only data which they do not reflect are those which Plaintiffs themselves failed to upload to SharePoint in the first place, and for which DPH can and should not be held accountable.

Second, sanctions are improper because, like in *Steve & Sons* where the court refused to impose sanctions when a party had failed to request discovery from certain sources, Plaintiffs have failed to pursue other avenues of discovery that would likely reveal some of the requested information. 327 F.R.D. at 109. In fact, Plaintiffs have not requested any information from Doctors Daily and Jones' personal laptops, even though it was preserved and Plaintiffs were well aware Dailey and Jones used their personal laptops to discharge official DPH work — including their duties related to Plaintiffs' employment termination. Instead, Plaintiffs limited their own discovery requests by requesting information specifically and solely from SharePoint, and now move for sanctions based largely on their own failure to pursue other avenues of discovery. Thus — even if this Court were to find that the duty to preserve had attached and DPH failed to take reasonable steps to preserve ESI — Plaintiffs' Motion must be denied because it is unclear what if any information has been actually “lost,” and because any curative measures taken must be based on the actual, not potential, loss of information.

## Applicant Details

First Name	Kathryn
Last Name	Querner
Citizenship Status	U. S. Citizen
Email Address	<a href="mailto:kmq8vf@virginia.edu">kmq8vf@virginia.edu</a>
Address	<div> <div>Address</div> <div> <div>Street</div> <div>35 Cardiff</div> <div>City</div> <div>Laguna Niguel</div> <div>State/Territory</div> <div>California</div> <div>Zip</div> <div>92677</div> <div>Country</div> <div>United States</div> </div> </div>
Contact Phone Number	(949) 246 3005

## Applicant Education

BA/BS From	University of San Diego
Date of BA/BS	May 2019
JD/LLB From	University of Virginia School of Law
	<a href="http://www.law.virginia.edu">http://www.law.virginia.edu</a>
Date of JD/LLB	May 22, 2022
Class Rank	School does not rank
Law Review/Journal	Yes
Journal(s)	Virginia Journal for Social Policy and the Law
Moot Court Experience	No

## Bar Admission

## Prior Judicial Experience

Judicial Internships/ Externships	Yes
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Post-graduate Judicial Law Clerk      **No**

## **Specialized Work Experience**

### **Recommenders**

Sanchez, Camilo  
csanchez@law.virginia.edu  
(434) 924-7893

Nugent, Edward  
nugente@cafc.uscourts.gov  
(831) 214-7212

Riley, Margaret  
mimiriley@law.virginia.edu  
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### **References**

Professor Margaret Riley: mimiriley@law.virginia.edu, (434) 924-4671

Professor Camilo Sanchez: csanchez@law.virginia.edu, (434) 924-7304

Mr. Edward Nugent: e.w.nugent@gmail.com, (831) 214-7212

**This applicant has certified that all data entered in this profile and any application documents are true and correct.**

Kathryn Querner  
2102 Arlington Blvd, Unit 5  
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June 14, 2021

The Honorable Elizabeth W. Hanes  
U.S. District Court for the Eastern District of Virginia  
Spottswood W. Robinson III & Robert R. Merhige, Jr. U.S. Courthouse  
701 East Broad Street, Suite 5318  
Richmond, VA 23219

Dear Judge Hanes:

I am a rising third-year student at the University of Virginia School of Law, and I am writing to apply for a judicial clerkship in your chambers following my graduation in May 2022.

I have spent the last two years in Charlottesville, Virginia, and I would like to practice in the area upon graduation. I hope to practice in the public sector, and I believe that a clerkship in Richmond, Virginia would allow me to form regional ties with the local community and would introduce me to the legal needs of the community.

I am enclosing my resume, my most recent transcript, and a writing sample. You will also be receiving letters of recommendation from Professors Margaret Riley and Camilo Sanchez as well as one from Edward Nugent, the supervising clerk at my judicial internship last summer. All three recommenders have said that they would be happy to speak with you. If you would like to reach them, Professor Riley's telephone number is (434) 924-4671 and Professor Sanchez's telephone number is (434) 924-7304. Mr. Nugent is reachable at (831) 214-7212.

Please let me know if I can provide any further information. I appreciate your consideration.

Sincerely,

Kathryn Querner

## Kathryn M. Querner

2102 Arlington Blvd Unit 5, Charlottesville, VA 22903 • (949) 246-3005 • kmq8vf@virginia.edu

### EDUCATION

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**University of Virginia School of Law**, Charlottesville, VA

*J.D.*, 3.51 GPA, Expected May 2022

- *Virginia Journal for Social Policy & the Law*, Editorial Board
- *Virginia Law Weekly*, Features Editor
- Program for Law and Public Service, Fellow
- Alternative Winter Break Pro Bono Project, Team Leader, January 2021
- Alternative Spring Break Pro Bono Project, Catholic Charities in New York, NY, March 2020

**University of San Diego**, San Diego, CA

*Bachelor of Arts*, English, *summa cum laude*, May 2019

- Honors Program
- Study Abroad: Prague, CZ, January 2018 – May 2018

### EXPERIENCE

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**Illinois Prison Project**, Chicago, IL

*Law Clerk*, June 2021 – Present

- Draft petitions for commutation of individuals incarcerated in Illinois prisons
- Engage in legislative advocacy to improve systemic issues in the criminal system, specifically sentencing and prison conditions

**Innocence Project Clinic at UVA Law**, Charlottesville, VA

*Clinic Volunteer*, August 2020 – Present

- Research and conduct investigations for persons claiming to have been wrongfully incarcerated
- Draft memoranda recommending legal courses of action for incarcerated persons

**U.S. District Court for the Central District of California**, Santa Ana, CA

*Judicial Extern for the Hon. David O. Carter*, May 2020 – August 2020

- Researched complex issues surrounding detainment and incarceration during the COVID-19 pandemic
- Conducted legal research and drafted various types of orders

**Berger Kahn, A Law Corporation**, Irvine, CA

*Legal Intern*, May 2019 – August 2019

- Assisted attorneys with legal research for presentations and depositions

**California Innocence Project**, San Diego, CA

*Legal Intern*, February 2019 – May 2019

- Corresponded with inmates seeking assistance in proving their innocence

### INTERESTS

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Competitive swimming, watercolor painting, and playing piano

UNIVERSITY OF VIRGINIA  
SCHOOL OF LAW

Name: Kathryn Querner

Date: June 09, 2021

Record ID: kmq8vf

**This is a report of law and selected non-law course work (including credits earned). This is not an official transcript.**

**Due to the global COVID-19 pandemic, the Law faculty imposed mandatory Credit/No Credit grading for all graded classes completed after March 18 in the spring 2020 term.**

**FALL 2019**

LAW	6000	Civil Procedure	4	B+	Nelson,Caleb E
LAW	6002	Contracts	4	A-	Hynes,Richard M
LAW	6003	Criminal Law	3	B+	Coughlin,Anne M
LAW	6004	Legal Research and Writing I	1	S	Buck,Donna Ruth
LAW	6007	Torts	4	B+	White,George E

**SPRING 2020**

LAW	6001	Constitutional Law	4	CR	Forde-Mazrui,Kim A
LAW	6104	Evidence	4	CR	Brown,Darryl Keith
LAW	7088	Law and Public Service	3	CR	Shin,Crystal Sue
LAW	6005	Lgl Research & Writing II (YR)	2	S	Buck,Donna Ruth
LAW	6006	Property	4	CR	Johnson,Alex M

**FALL 2020**

LAW	7009	Criminal Procedure Survey	4	A-	Harmon,Rachel A
LAW	8628	Innocence Project Clinic (YR)	4	CR	Enright,Deirdre M.
LAW	7055	International Human Rights Law	3	B+	Versteeg,Emiliana Maria There
LAW	7192	Law and Ethics of Biotech	3	B+	Riley,Margaret F

**SPRING 2021**

LAW	8004	Con Law II: Speech and Press	3	B+	Kendrick,Leslie Carolyn
LAW	7131	Criminology	3	B+	Monahan,John T
LAW	8629	Innocence Project Clinic (YR)	4	A-	Enright,Deirdre M.
LAW	6107	International Law	3	A	Verdier,Pierre-Hugues
LAW	7071	Professional Responsibility	2	A	Faglioni,Kelly

Camilo Sanchez  
University of Virginia School of Law  
580 Massie Road  
Charlottesville, VA 22903

June 07, 2021

The Honorable Elizabeth Hanes  
Spottswood W. Robinson III & Robert R. Merhige,  
Jr., U.S. Courthouse  
701 East Broad Street, 5th Floor  
Richmond, VA 23219

Dear Judge Hanes:

I am writing to provide a recommendation for Kathryn Querner in connection with her application for a judicial clerkship. In the two years that I have known Kathryn, I can confidently say that she will be an exceptional clerk, an outstanding attorney.

I had the pleasure of meeting Kathryn as a student in my international human rights law course. Kathryn was beginning her second year of law school at the time, but she already demonstrated a remarkable ability to link complex social problems with legal principles and arguments. She was one of the most active students in the classroom. Her questions were sharp and always led to insightful discussions about how human rights principles could be realized in practice.

As part of the class, students were required to write a legal brief applying international law to concrete human rights violations. Kathryn's work was outstanding given her research and argumentation quality - skills that she has been cultivating since her English major and honed by the legal writing instruction she has received at our school.

Since then, I have followed Kathryn's personal and professional growth. She is seriously committed to public service and has not turned down any opportunity to serve and learn simultaneously. Evidence of that commitment is her summer internship with the Hon. David O. Carter in the U.S. District Court for the Central District of California. I have no doubt she will also gain tremendous experience from her upcoming summer internship with the Illinois Prison Project --where she will focus on systemic advocacy and legislative reform in Illinois to improve prison conditions and reduce sentences for specific deserving subsets of the population.

Her legal training will also benefit from an exchange program that Kathryn will undertake in her third year of law school in Madrid, Spain. Study abroad opportunities are very competitive at our school. But the international relations committee -- of which I am a member -- had no problem selecting Kathryn as one of our global ambassadors. In the committee's judgment, Kathryn's academic strength and personal integrity make her an outstanding representative of UVA Law's values.

For Kathryn, a judicial clerkship represents a chance to learn about the inner workings of the legal system as a jumping-off point for entering the public sector. She is actively looking for opportunities to engage with the community and uphold justice to serve that community best.

Moreover, she is much more than an excellent student and a committed public servant. She is a wonderful and decent person, and I am confident that she will be a clerk of the same conscience, character, and caliber. I can recommend her to you as a clerk with confidence that she would do an excellent job and make the most of the experience. Please do not hesitate to contact me with any questions that you may have.

Sincerely,

Camilo Sanchez

Camilo Sanchez - csanchez@law.virginia.edu - (434) 924-7893

June 10, 2021

The Honorable Elizabeth Hanes  
Spottswood W. Robinson III & Robert R. Merhige,  
Jr., U.S. Courthouse  
701 East Broad Street, 5th Floor  
Richmond, VA 23219

Dear Judge Hanes:

I am writing to recommend Kathryn Querner for a clerkship in your chambers. When I was clerking for Judge David O. Carter on the Central District of California, Kathryn was one of our three externs in the summer of 2020, and my experience supervising her in our chambers leads me to believe she would be an excellent law clerk.

Calling Kathryn's job with us an "externship" greatly understates the responsibility we gave her and the other externs. The litigation volume in the Central District is at or near the top among the federal district courts, and the district's bench was severely understaffed during my term. As a result, my co-clerk and I simply didn't have the time to assign our externs memos or case writeups; instead, we gave them some of our more straightforward motions and had them write the first drafts of orders. An externship in our chambers was much more like a miniature clerkship.

Kathryn had no trouble handling these duties, quickly demonstrating that she could manage a challenging and voluminous workload with skill and grace. Her drafts were thoroughly researched, and I never needed to extensively revise her writing. When I gave Kathryn edits or asked her to take another look at an issue, she not only appreciated the feedback, but also reliably incorporated the improvements my co-clerk and I suggested into her future assignments. In short, Kathryn is an attentive learner and a diligent worker—after only a year of law school, she was prepared for the rigors of externing in our chambers—and I think she is well equipped to thrive as a clerk.

Kathryn is also very easy to work with; she's both amiable and professional, and supervising her was a breeze. As an extern, she struck a perfect balance between working independently and seeking out guidance and feedback. And when she asked for help, it was evident that she had already conducted her own research and thought about the problem in depth. This, of course, was a great help to me and my co-clerk, enabling efficient, productive engagement with the legal issue under consideration. Throughout the summer, I was grateful for Kathryn's thoughtful and conscientious approach to her work.

In addition to her sharp mind and industrious work habits, I was repeatedly impressed by the way Kathryn's legal imagination is shaped and informed by her conscience. Even when discussing routine motions, Kathryn was clearly thinking beyond the "correct" doctrinal result. She was deeply attentive to the human impact of each case and treated her assignments as an opportunity to create justice for the parties. On one occasion, Kathryn was so concerned about a moral aspect of a case that she recommended we reach a different result than I had originally suggested. I saw her point, and when she and I discussed the case with Judge Carter, he agreed with her as well. I wish I could get further into specifics without breaching confidentiality. Suffice it to say that we were tremendously appreciative of the compassionate, humane perspective Kathryn brings to bear on her legal analysis.

Simply put, Kathryn is a careful thinker and a personable colleague with a profound desire to use and shape the law for good. I'm sure that these qualities will make her just as much of an asset in your chambers as she was in ours.

Best,  
Edward Nugent  
Law Clerk to the Hon. Timothy B. Dyk  
U.S. Court of Appeals for the Federal Circuit

Edward Nugent - nugente@cafc.uscourts.gov - (831) 214-7212

June 09, 2021

The Honorable Elizabeth Hanes  
Spottswood W. Robinson III & Robert R. Merhige,  
Jr., U.S. Courthouse  
701 East Broad Street, 5th Floor  
Richmond, VA 23219

Re: Clerkship Letter of Recommendation for Kathryn Querner

Dear Judge Hanes:

It gives me great pleasure to write this letter on behalf of Kathryn Querner who is applying for a clerkship with your court following her graduation in 2022. I recommend her with great enthusiasm. She is smart, diligent, and would be a joy to have in chambers.

I got to know Kathryn first as my mentee in the law school's Public Service program. Kathryn impressed me in our first meeting as intelligent, articulate and quietly passionate. While many students come to law school interested in public service, only the most committed take on the considerable extra labor involved in participation in the Public Service program. For Kathryn, public service is clearly a calling. Moreover, her calling is not based on idealistic notions but on real world experience. I have enjoyed every part of our mentorship experience; indeed, I often learn as much from Kathryn as she does from me.

Last fall, I had the opportunity to see Kathryn's intellectual tenacity first-hand when she took my Law and Ethics in Biotechnology class. It was a real risk for Kathryn because unlike most of the students in the class, she had a limited science background. She took the class because our conversations in the mentorship contexts had made her realize that scientific and bioethical questions have an important overlay in public service and may play an even broader role in the future. We see this already in the role of genetics in Innocence Project cases and Kathryn wanted an in-depth understanding. Kathryn had to work twice as hard as many of the students. Her B+ in that class represents a major accomplishment. Moreover, her work in criminal justice and international human rights provided the rest of the class important insights that would have been missing without her. Kathryn is particularly good at integrating her real-world experience into the new material that she is learning, while at the same time looking at that real-world experience with a fresh eye. That makes her discussion particularly helpful and despite her relative lack of experience in biotechnology, she was always well prepared and willing to participate. She was a joy to teach because she approached each question with enthusiasm and curiosity.

Overall, Kathryn is everything one could want in a law school student. She is extremely bright, thoughtful, empathetic, critical (of herself and her learning), engaged, and also a team player. She is naturally a bit reserved, but fun to be around. She clearly loves to learn and she will approach a clerkship as a real opportunity to do so. In short, I believe that Kathryn possesses the intelligence, the skills and the personality to make a superb law clerk.

If you have any questions or would like to discuss Kathryn's application, do not hesitate to call me at the telephone number listed below.

Sincerely yours,

Margaret Foster Riley

Margaret Riley - [mimiriley@law.virginia.edu](mailto:mimiriley@law.virginia.edu) - (434) 924-4671

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES – GENERAL

Case No. XXX

Date: X/XX/XXX

Title: PLAINTIFF v. DEFENDANT X (parties' names and case number omitted from sample  
per the request of Judge Carter)

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PRESENT:

THE HONORABLE DAVID O. CARTER, JUDGE

X

\_\_\_\_\_  
Courtroom Clerk

Not Present

\_\_\_\_\_  
Court Reporter

ATTORNEYS PRESENT FOR

PLAINTIFF:

None Present

ATTORNEYS PRESENT FOR

DEFENDANT:

None Present

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**PROCEEDINGS (IN CHAMBERS):**

**ORDER GRANTING IN PART  
DEFENDANTS' MOTIONS TO  
DISMISS [15, 26]**

Before the Court are DEFENDANT X's Motion to Dismiss Plaintiff's First Amended Complaint ("DEFENDANT X Motion") and DEFENDANT Z's Motion to Dismiss and Motion to Strike Plaintiff's First Amended Complaint ("DEFENDANT Z Motion"). The Court finds this

matter appropriate for resolution without oral argument. *See* Fed. R. Civ. P. 78; L.R. 7-15. Having reviewed the papers and considered the parties’ arguments, the Court **GRANTS IN PART** the Motions.

## I. Background

### A. Facts

The following facts are drawn from the First Amended Complaint in this action (“FAC”) (Dkt. 14). This is a putative class action against DEFENDANT X, DEFENDANT Y, and DEFENDANT Z (collectively, “Defendants”). *See generally* FAC. PLAINTIFF (“Plaintiff”) and other members of the putative class were customers of the Defendants who used Defendants’ services to rate and purchase baseball cards. *Id.* ¶ 32. Plaintiff alleges seven causes of action against DEFENDANTS X and Y and five causes of action against DEFENDANT Z for an unlawful scheme involving altering and selling altered baseball cards, as well as related unfair and fraudulent business practices. *See generally id.*

Plaintiff and the members of the putative class were customers of the Defendants who submitted their own baseball cards to DEFENDANT X for grading, purchased DEFENDANT X-graded cards, and currently hold altered DEFENDANT X-graded cards. *Id.* ¶ 32. DEFENDANT X is a Delaware corporation with its principal place of business in Santa Ana, California. *Id.* ¶ 44. DEFENDANT Y is an Oregon corporation with its principal place of business in Tigard, Oregon. *Id.* ¶¶ 46, 47. DEFENDANT Y engages in substantial business in California and allegedly directed advertisements for altered baseball cards toward members of the putative class in California. *Id.* ¶ 47. DEFENDANT Z is an individual residing in New Jersey, who conducts substantial business in California and allegedly directed advertisements for altered cards toward members of the class in California. *Id.* ¶¶ 48, 49.

DEFENDANT X provides a baseball trading card grading service that involves a card owner sending a card to DEFENDANT X for rating. *Id.* ¶ 10. DEFENDANT X will then determine whether the card is authentic and unaltered and will grade it on a scale from 1-10 based on the condition of the card. *Id.* If the card is altered, DEFENDANT X will not grade the card. *Id.* In 2019, a number of baseball card collectors discovered that cards were being altered

and still receiving grades from DEFENDANT X. *Id.* ¶¶ 70, 71. For example, in 2017, a T206 Billy Maloney card was sold at an auction for \$81 with a grade of 4.5. *Id.* ¶ 75. It was later sold, Plaintiff alleges, on February 5, 2018 for \$1,000 after being altered and submitted to DEFENDANT X who graded it at 7. *Id.* Plaintiff alleges that collectors have uncovered scores of similar instances of altered cards that were graded by DEFENDANT X. *Id.* ¶ 76. Plaintiff further alleges that DEFENDANT X acted preferentially toward customers who submitted greater quantities of cards and paid higher appraisal fees to them, including the allegation that DEFENDANT X graded altered cards and graded cards at higher values than they would have otherwise. *Id.* ¶ 88. Plaintiff alleges that this conduct was conscious and willful. *Id.* ¶ 167.

DEFENDANT Y sells baseball cards and, in its course of business with customers, guarantees efficient and honest services and to handle every trade with integrity by ensuring authenticity and offering full refunds for purchases of professionally-graded cards that are later determined to have been altered prior to purchase. *Id.* ¶ 94. Plaintiff alleges that DEFENDANT Y has not upheld these guarantees, as DEFENDANT Y has knowingly sold altered cards without indicating that they were altered and has refused to issue refunds of the purchase price for those cards. *Id.* ¶ 95. For example, Plaintiff alleges that the aforementioned Billy Maloney card was purchased by DEFENDANT Y, altered, regraded by DEFENDANT X, then sold by DEFENDANT Y with the new altered rating. *Id.* ¶ 97. Plaintiff alleges that DEFENDANT Y knew the cards were altered because experts in the trading card field should be able to identify alterations. *Id.* ¶ 100. Plaintiff further identifies fraudulent business practices in which he alleges that DEFENDANT Y engaged, such as employing an “Eye Appeal” system to disproportionately grade cards that were higher in visual appeal in order to deceive customers, and also encouraging its sellers to shill bid—a practice involving fraudulent bidding by the seller in order to drive up action prices—to increase its own profits at the expense of customers who are paying artificially inflated prices. *Id.* ¶¶ 101–107.

Plaintiff alleges that collectors have identified many altered cards sold by DEFENDANT Z, such as a Sidney Crosby autographed rookie card that was altered and sold by DEFENDANT

Z. *Id.* ¶¶ 108–109. Plaintiff alleges that DEFENDANT Z knew he was selling altered cards because experts in the trading card field should be able to identify alterations. *Id.* ¶ 110.

Plaintiff alleges that the Defendants used numerous interstate wire communications, including internet advertisements, in service of their scheme through misrepresentations, concealments, and deceptive omissions. *Id.* ¶ 224. Further, Plaintiff alleges that Defendants used the U.S. Postal Service to further their scheme by using the Postal Service to send and receive altered baseball cards. *Id.* ¶ 225.

Finally, Plaintiff alleges that he and members of the putative class sustained losses, injuries, and damages arising from Defendants’ illegal policies. *Id.* ¶ 136.

### **B. Procedural History**

(OMITTED FROM SAMPLE)

## **II. Legal Standard**

(OMITTED FROM SAMPLE)

## **III. Discussion**

### **A. Plaintiff Lacks Standing**

Federal courts have an independent obligation to examine standing to determine whether it comports with the “case or controversy” requirement of Article III of the Constitution. U.S. Const. Art. 3, § 2, cl. 1; *see Steel Co. v. Citizens for a Better Env’t*, 523 U.S. 83, 95 (1998). Article III requires that a plaintiff allege (1) an “injury in fact;” (2) “causation;” and (3) “redressability.” *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992). Injury in fact is an invasion of a “legally protected interest which is (a) concrete and particularized; and (b) ‘actual or imminent, not conjectural or hypothetical.’” *Id.*; *Whitmore v. Arkansas*, 495 U.S. 149, 154 (1990) (quoting *Los Angeles v. Lyons*, 461 U.S. 488, 494 (1974)). In the Ninth Circuit, an injury is “concrete for the purposes of standing if it ‘actually exist[s],’ meaning it is ‘real, and not abstract.’” *Campbell v. Facebook*, 951 F.3d 1106 (9th Cir. 2020) (quoting *Spokeo, Inc. v. Robins*, 136 S. Ct. 1540, 1548–49 (2016)). In the Ninth Circuit, a plaintiff asserting a claim regarding a

good they have purchased cannot establish standing when “the allegations that the [good is] worth less are conclusory and unsupported by any facts,” and when “plaintiffs have not, for example, alleged a demonstrable effect on the market for their specific [good] based on documented recalls or declining . . . values.” *Cahen v. Toyota Motor Corp.*, 717 Fed. Appx. 720, 723–724 (9th Cir. 2017).

Plaintiff has failed to identify a concrete injury. Plaintiff lacks standing to bring any claim alleged in his FAC because the allegations he makes—(1) that a card/cards he has purchased from Defendants are devalued; and (2) that Defendants would not abide by their guarantee clause—are conclusory and non-concrete.

First, Plaintiff fails to allege a concrete injury arising out of his allegation that a card/cards he has purchased from Defendants lost value because he fails to identify any specific card that has been altered or devalued. Plaintiff instead vaguely asserts that “[DEFENDANT X] represents that it does not grade altered cards when in fact it did grade altered cards. [DEFENDANT X] guaranteed that it would reimburse the difference between cards that were misgraded,” and “Defendant [DEFENDANT Y] represents that it does not sell undisclosed altered cards when it in fact did sell undisclosed altered cards. [DEFENDANT Y] guarantees that it will refund purchasers of undisclosed altered cards.” FAC ¶¶ 142, 143. Nowhere in the FAC does Plaintiff identify a concrete and particularized instance of purchasing a card that lost value or identify a card Plaintiff would not have purchased in the absence of Defendants’ business practices. Further, Plaintiff fails to provide any basis for alleging that the cards were doctored, the price he paid for any card, or the before and after prices of any card/cards that Plaintiff purchased. A conclusory allegation of injury with no facts showing the loss in value of a good is insufficient to establish injury. *See Cahen*, 717 Fed. Appx. at 723.

Here, Plaintiff provides conclusory allegations with no factual backing that a card/cards lost value. FAC ¶ 43 (“During the relevant time period, Plaintiff believes that he purchased, at a premium price, at least one [DEFENDANT X] graded card . . . and that he purchased at least one altered card from [DEFENDANT Y] and [DEFENDANT Z]. By creating doubt in the authenticity and value of rated cards, Defendants have caused all of Plaintiff’s cards to decrease

in value.”). Further, Plaintiff fails to support his claim that he would not have purchased the cards in the absence of Defendants’ purported illegal practices or that Defendants would not abide by their guarantees. FAC ¶¶ 144, 156, 184 (“On information and belief, neither DEFENDANT X nor DEFENDANT Y have stood by their guarantees . . . Plaintiff and the other members of the Classes would not have purchased cards rated by DEFENDANT X or paid DEFENDANT X for rating services but for Defendant’s deceptive and unlawful acts.”). Because Plaintiff fails to concretely or specifically allege injury in fact related to the devaluing of a card/cards sold by Defendants, Plaintiff lacks standing to bring these claims.

Second, Plaintiff fails to allege injury by virtue of his contention that Defendants would not abide by their satisfaction guarantee clause. FAC ¶¶ 144, 156 (“On information and belief, neither [DEFENDANT X] nor [DEFENDANT Y] have stood by their guarantees.”). Like Plaintiff’s allegation that a card/cards he purchased from Defendants lost value, this allegation is vague, speculative, and wholly conclusory. In fact, nowhere in the FAC does Plaintiff claim to have attempted to take advantage of the satisfaction guarantee. Because Plaintiff fails to allege that he has attempted to avail himself of the guarantee and does not make any other specific allegation in support of his conclusive contention that “[o]n information and belief, neither [DEFENDANT X] nor [DEFENDANT Y] have stood by their guarantees,” Plaintiff’s allegation that he has suffered injury as a result of Defendants’ purported failure to stand by their satisfaction guarantee is vague and speculative and fails to satisfy the standing requirement that facts giving rise to injury be pleaded concretely and particularly.

Because the allegations that Plaintiff pleads in his FAC are vague and non-concrete, Plaintiff has failed to satisfy Article III’s injury-in-fact requirement. Accordingly, each and every claim pleaded in Plaintiff’s FAC is **DISMISSED WITH LEAVE TO AMEND** to allow Plaintiff to correct the deficient pleading as it relates to standing.

In addition to Plaintiff’s failure to adequately plead injury in fact as a requirement for Article III standing, Plaintiff’s claims fail to satisfy the requirements of Fed. R. Civ. P. 8(a) for a number of reasons. The Court addresses these deficiencies below.

## B. Failure to State a Claim

### 1. Plaintiff's Seventh Claim for RICO Violations Fails

RICO section 1962(c) makes it “unlawful for any person employed by or associated with any enterprise engaged in, or the activities of which affect, interstate or foreign commerce, to conduct or participate, directly or indirectly, in the conduct of such enterprise’s affairs through a pattern of racketeering activity . . .” 18 U.S.C. § 1962(c). To bring a RICO claim under section 1962(c), a plaintiff must show five elements: (i) conduct (ii) of an enterprise (iii) through a pattern (iv) of racketeering activity, and (v) injury in the plaintiffs’ business or property by the conduct constituting the violation. *See Sedima S.P.R.L. v. Imrex Co., Inc.*, 473 U.S. 479, 496 (1985). Further, “an enterprise includes any union or group of individuals associated in fact.” *United States v. Turkette*, 452 U.S. 576, 580 (1981). To establish enterprise, a plaintiff must allege: “(1) a common purpose, (2) an ongoing organization, and (3) a continuing unit.” *United States v. Christensen*, 828 F.3d 763, 780 (9th Cir. 2015). And, “if the section 1962(c) claim does not state an action upon which relief could ever be granted, regardless of evidence, then the section 1962(d) claim cannot be entertained.” *Neibel v. Trans World Assurance Co.*, 108 F.3d 1123, 1127 (9th Cir. 1997).

To show the existence of an association-in-fact “enterprise” within the meaning of RICO, the complaint must describe “‘a group of persons associated together for a common purpose of engaging in a course of conduct[]’ . . . [and] must provide both ‘evidence of an ongoing organization, formal or informal,’ and ‘evidence that the various associates function as a continuing unit.’” *Odom v. Microsoft Corp.*, 486 F.3d 541, 552 (9th Cir. 2007) (quoting *Turkette*, 452 U.S. at 583). Further, “[t]he ‘enterprise’ is not the ‘pattern of racketeering activity’; it is an entity separate and apart from the pattern of activity in which it engages.” *Doan v. Singh*, 617 Fed. Appx. 684, 685 (9th Cir. 2015) (quoting *Turkette*, 452 U.S. at 583).

Plaintiff alleges that “the enterprise functioned by representing that fraudulently altered trading cards were not altered and were in fact highly desirable cards in excellent condition and by selling those cards to the consuming public” for the purpose of “increas[ing] revenue for the

Defendants . . . associated-in-fact with the enterprise’s activities through the illegal scheme to grade and sell the altered cards . . . until at least the summer of 2019,” and that Defendant “[X] graded the altered cards,” Defendant “[Y] sold altered cards,” and Defendant “Z sold altered cards,” which satisfies Plaintiff’s burden to identify what each individual did, when they did it, and how they functioned together as a continuing unit. FAC ¶¶ 211, 213, 217–19; *see Doan*, 617 Fed. Appx. at 686. Therefore, Plaintiff’s FAC sufficiently alleges an association-in-fact enterprise under RICO.

However, to establish a “pattern of racketeering activity” under RICO, a plaintiff must allege at least two predicate acts within ten years of each other, though these two acts are not necessarily sufficient, and a plaintiff must also show that the racketeering predicates are related and “that they amount to or pose a threat of continued criminal activity.” 18 U.S.C. § 1962(c); *see, e.g., Turner v. Cook*, 362 F.3d 1219, 1229 (9th Cir. 2004); *H.J. Inc. v. N.W. Bell Tel. Co.*, 492 U.S. 229, 239 (1989). Here, Plaintiff alleges mail and wire fraud as RICO predicates. FAC ¶ 222; 18 U.S.C. §§ 1341 (mail fraud) and 1343 (wire fraud). Because Plaintiff seeks to plead RICO’s pattern element through predicate acts of mail and wire fraud, the heightened pleading requirements of Fed. R. Civ. P. 9(b) apply and require Plaintiff to plead the “who, what, when, where, and how” of Defendants’ alleged fraudulent conduct. *Doan*, 617 Fed. Appx. at 685; *Vess v. Ciba-Geigy Corp. USA*, 317 F.3d 1097, 1106 (9th Cir. 2003).

Plaintiff has not met the heightened pleading requirements of Rule 9(b). The FAC identifies that Defendants “used, directed the use of, and/or caused to be used, numerous interstate wire communications, including internet advertisements, in service of their scheme” and that Defendants “used, directed the use of, and/or caused to be used the Postal Service in service of their scheme by using the Postal Service to send and receive altered cards.” FAC ¶¶ 224–225. Plaintiff fails to describe the place, timing, specific parties involved, or specific altered cards that have been sent and received by the Defendants. Without these additional details, Plaintiff’s FAC cannot show that the RICO predicate acts rise to a pattern of racketeering activity, much less that they are related and “amount to or pose a threat of continued criminal activity.” *Turner*, 362 F.3d at 1229. Because Plaintiff has not pleaded the circumstances of the mail and wire fraud allegations with sufficient specificity, Plaintiff’s section 1962(c) RICO claim

fails. And as the section 1962(c) claim fails to state a claim, Plaintiff's section 1962(d) claim necessarily fails. *See, e.g., Neibel v. Trans World Assurance Co.*, 108 F.3d 1123, 1127 (9th Cir. 1997). Accordingly, Plaintiff's Seventh Claim for RICO violations is **DISMISSED WITH LEAVE TO AMEND**.

## 2. Plaintiff's Fourth and Sixth Claims Fail to Meet the Heightened Pleading Standard for Fraud

(OMITTED FROM SAMPLE)

### IV. Disposition

For the reasons set forth above, the Court **GRANTS IN PART** Defendants' Motions to Dismiss. In particular, the Court:

—**DISMISSES WITH LEAVE TO AMEND** all claims for lack of standing and the Fourth, Sixth, and Seventh claims for failure to state a claim.

Plaintiff may file an amended complaint on or before X X, 2020. Given that this Court's jurisdiction is based on the sole federal RICO claim against all Defendants, if Plaintiff cannot adequately plead a claim under RICO, the Court will remand the action for lack of jurisdiction.

The Clerk shall serve this minute order on the parties.

MINUTES FORM 11

Initials of Deputy Clerk: xx

CIVIL-GEN

## Applicant Details

First Name **Sarah**  
 Middle Initial **R**  
 Last Name **Rahman**  
 Citizenship Status **U. S. Citizen**  
 Email Address [sr.rahman64@gmail.com](mailto:sr.rahman64@gmail.com)

Address

<p><b>Address</b></p> <p><b>Street</b>  <b>8507 Horseshoe Rd</b></p> <p><b>City</b>  <b>Ellicott City</b></p> <p><b>State/Territory</b>  <b>Maryland</b></p> <p><b>Zip</b>  <b>21043</b></p> <p><b>Country</b>  <b>United States</b></p>
--

Contact Phone Number **4433193142**

## Applicant Education

BA/BS From **Salisbury University**  
 Date of BA/BS **May 2017**  
 JD/LLB From **Drexel University Thomas R. Kline School of Law**  
<https://drexel.edu/law>

Date of JD/LLB **May 24, 2021**

Class Rank **33%**

Does the law school have a Law Review/Journal? **Yes**

Law Review/Journal **No**

Moot Court Experience **No**

## Bar Admission

## Prior Judicial Experience

Judicial Internships/Externships **Yes**

Post-graduate Judicial Law Clerk **Yes**

### **Specialized Work Experience**

Specialized Work Experience      **Immigration**

### **Recommenders**

Hall Johnson, Lisa  
Lisa.Hall.Johnson@mdcourts.gov  
(301) 298-4080  
Medinilla, Vivian  
vivian.medinilla@state.de.us  
302-255-0626

**This applicant has certified that all data entered in this profile and any application documents are true and correct.**

**SARAH RAHMAN**

8507 Horseshoe Road • Ellicott City, MD 21043 • (443) 319-3142 • sr.rahman64@gmail.com

March 8<sup>th</sup>, 2022

United States District Court

To the Honorable Judge Hanes,

I am currently a law clerk at the Prince George's County District Court and am extremely interested in clerking at the US District Court in Judge Hane's chambers. I believe that my passion for the law and work experience would make me an asset as a clerk and allow me to become the best practitioner I can be.

During my summer internships, I was able to garner a wide variety of skills that have helped me in my legal career. In the summer of 2019, I was able to work at the American-Arab Anti-Discrimination Committee (ADC) in Washington, D.C. While at the ADC I was able to write not only legal memoranda, but also, Emergency Motions for clients in danger of imminent deportation and other motions presented to the Court. These tasks gave me invaluable experience with researching different governing statutes and different areas of law, both national and international. Much of my supervising attorneys' work required extensive background research on legislative policies, international treaties, and country conditions; I made sure that they had as much information as they needed and was always poised to draft memoranda to succinctly disseminate what I learned.

The following summer I was fortunate enough to work with the team at the Institute for Constitutional Advocacy and Protection at Georgetown Law (ICAP). At ICAP I gained more experience with researching different areas of law and legal writing, further honing my skills and developing a penchant for research and writing. I researched both established areas of law—including condemnation cases, civil rights law, electioneering laws, and the constitutionality of certain federal statutes—and burgeoning areas of law, such as online defamation and incitement to violence, and doxing. As there was little jurisprudence on these new areas of law, I had to delve deeper into my research, looking into different courts' decisions, legislative discourse, and any other avenue which could help me best advise my supervisors.

During my final semester of law school, I interned with the Honorable Judge Vivian Medinilla of the Delaware Superior Court and found myself able to use the skills I had acquired during my internships and schooling. I was tasked with not only researching for and writing memoranda for the Judge and her clerk, but also with deciding on and drafting approvals and denials for Motions to Dismiss and Rule 35 motions and drafting other opinions and orders for her Honor. I took this newfound expertise I gained from my internship with the Judge and brought it with me to the Prince George's County District Court.

Here at the District Court, I have had the privilege of working with many Judges, learning from their experiences, and witnessing their work. I have been able to observe the regular dockets and also learn about the holistic approach to justice here at the Court, helping run the Mental Health and Drug Courts used here. This opportunity at the Court has allowed me to research more pointed questions from the Judges, further developing and keeping sharp my research skills. Finally, I have been able to complete my tasks of reviewing, then approving or denying, Affidavit Judgments and Petitions for Expungement.

I believe that my experiences, legal research capabilities, and enthusiasm would make me a great fit to clerk for Her Honor. Thank you for your consideration and I hope to hear from you soon!

Warmly,  
Sarah Rahman

## SARAH RAHMAN

Maryland | Washington, DC | (443) 319-3142 | [sr.rahman64@gmail.com](mailto:sr.rahman64@gmail.com)

**Professional Summary:** Judicial law clerk seeking full-time opportunities in the public legal sector. Strong passion and demonstrated experience in constitutional, legislative, and international law and policy issues, and with impact litigation.

### EXPERIENCE

**The Honorable Judge Lisa Hall-Johnson, District Court of Prince George's County** Maryland  
*Judicial Law Clerk* August 2021 – Present

- Researched and wrote memoranda on legal issues brought to me by different Judges
- Reviewed Affidavit Judgment requests and Expungement Petitions
- Assisted in running the Mental Health Court and Drug Court dockets

**The Honorable Judge Vivian Medinilla at the Superior Court of Delaware** Philadelphia, PA  
*Judicial Law Clerk* January 2020 – May 2020

- Researched and wrote memoranda on a myriad of different legal issues brought to the court
- Decided on and drafted approvals and denials of Motions to Dismiss and Rule 35 Motions
- Drafted opinions and orders for Her Honor

**The Institute for Constitutional Advocacy and Protection at Georgetown Law** Washington, DC  
*Legal Intern* May 2020 - August 2020

- Conducted legal and field research in areas of law including civil rights law, federal statutes including §1373, and electioneering law
- Researched and wrote memoranda on burgeoning areas of law, including online incitement to violence and online defamation
- Drafted legal memoranda on 18 U.S.C. § 1373 and online doxing
- Conducted research, edited, and checked citations for an amicus brief for *Jones v. Mississippi*, filed with the U.S. Supreme Court

**American-Arab Anti-Discrimination Committee** Washington, DC  
*Legal Intern* June 2019 - August 2019

- Conducted legal and policy research on Constitutional, administrative, and legislative issues related to immigration, security and discrimination, and wrote office memoranda
- Wrote Emergency Motions for Stay and Motions to Reopen for imminent deportation cases in relation to the *Hamama v. Adducci*, impact litigation
- Conducted client intakes and calls with detained and non-detained clients in English and Arabic
- Attended meetings with other governmental agencies and NGOs regarding policy initiatives

### EDUCATION

**Drexel University Thomas R. Kline School of Law**, GPA: 3.20 Philadelphia, PA  
Juris Doctor May 2021

- Recipient of the Rising Advocate Scholarship
- Founding Member and Vice President of American Constitution Society
- Founding Member and Secretary of the Muslim Law Students Association

**Salisbury University**, GPA: 3.67 Salisbury, MD  
Bachelor of Art, Political Science, *cum laude* May 2017

- National Panhellenic Council Executive Council Member
- Member of Phi Mu Fraternity



**Drexel University**  
3141 Chestnut Street  
Philadelphia, PA 19104

## Transcript Information Report

*Unofficial Transcript*

As of: Jun-01-2021

**Student:** Rahman, Sarah  
**Univ ID:** 14324984  
**Level:** LS

**Overall Cum GPA: 3.20 Overall Earned Hrs: 86.00**

**\*\*Overall Earned Hrs inclds Institutional & Transfer Credits**

**Term: 201811 Fall Semester 18-19**

**College:** Thomas R. Kline School of Law

**Major:** Law  
**Minor:**

**Program:** JD-S-LAW **Degree:** JD **Degree Statu:** Sought

Course	Course Title	Credit Hours	Grade	Rpt	Hon
LAW 550S 002	Torts	4.00	B+		
LAW 552S 002	Contracts	4.00	B-		
LAW 554S 002	Civil Procedure	4.00	A-		
LAW 565S 004	Legal Methods I	3.00	B+		

Attd: 15.00 Earned: 15.00 GPA Hrs: 15.00 Pts: 48.67 Term GPA: 3.24

Cum Ernd: 15.00 Cum GPA Hrs: 15.00 Cum Pts: 48.67 Cum GPA: 3.24

Academic Standing: *Good Standing*

**Term: 201831 Spring Semester 18-19**

**College:** Thomas R. Kline School of Law

**Major:** Law  
**Minor:**

**Program:** JD-S-LAW **Degree:** JD **Degree Statu:** Sought

Course	Course Title	Credit Hours	Grade	Rpt	Hon
LAW 555S 001	Legislation and Regulation	3.00	B+		
LAW 556S 002	Property	4.00	A-		
LAW 558S 002	Criminal Law	4.00	A		
LAW 566S 004	Legal Methods II	3.00	B-		

Attd: 14.00 Earned: 14.00 GPA Hrs: 14.00 Pts: 48.68 Term GPA: 3.47

Cum Ernd: 29.00 Cum GPA Hrs: 29.00 Cum Pts: 97.35 Cum GPA: 3.35

Academic Standing: *Dean's List*

**Term: 201911 Fall Semester 19-20**

**College:** Thomas R. Kline School of Law

**Major:** Law  
**Minor:**

**Program:** JD-S-LAW **Degree:** JD **Degree Statu:** Sought

Course	Course Title	Credit Hours	Grade	Rpt	Hon
LAW 560S 002	Constitutional Law	4.00	B		
LAW 621S 001	Federal Courts	3.00	B-		
LAW 701S 130	Federal Income Tax	4.00	B		
LAW 830S 001	Professional Responsibility	3.00	B+		

Attd: 14.00 Earned: 14.00 GPA Hrs: 14.00 Pts: 42.00 Term GPA: 3.00

Cum Ernd: 43.00 Cum GPA Hrs: 43.00 Cum Pts: 139.35 Cum GPA: 3.24

Academic Standing: *Good Standing*

**Term: 201931 Spring Semester 19-20**

**College:** Thomas R. Kline School of Law

**Major:** Law  
**Minor:**

**Program:** JD-S-LAW **Degree:** JD **Degree Statu:** Sought

Course	Course Title	Credit Hours	Grade	Rpt	Hon
LAW 604S 001	Advanced Constitutional Law	3.00	P		
LAW 611S 001	Sex, Gender, & the Law	3.00	P		
LAW 644S 001	Family Law	3.00	P		
LAW 722S 001	Employment Law	3.00	P		
LAW 825S 001	Intl Human Rts Advoc & Prctce	2.00	P		

Attd: 14.00 Earned: 14.00 GPA Hrs: 0.00 Pts: 0.00 Term GPA: 0.00

Cum Ernd: 57.00 Cum GPA Hrs: 43.00 Cum Pts: 139.35 Cum GPA: 3.24

Academic Standing: *Good Standing*

**Term: 202011 Fall Semester 20-21**

**College:** Thomas R. Kline School of Law

**Major:** Law  
**Minor:**

**Program:** JD-S-LAW **Degree:** JD **Degree Statu:** Sought

Course	Course Title	Credit Hours	Grade	Rpt	Hon
LAW 640S 001	Education Law	3.00	B+		
LAW 670S 001	Crim Pro Invest	3.00	C		
LAW 700S 001	Business Organizations	4.00	B		
LAW 880S 130	Advanced Legal Research	2.00	B+		
LAW T680S 0C	Constitutional Theory	3.00	A-		

Attd: 15.00 Earned: 15.00 GPA Hrs: 15.00 Pts: 45.66 Term GPA: 3.04

Cum Ernd: 72.00 Cum GPA Hrs: 58.00 Cum Pts: 185.01 Cum GPA: 3.18

Academic Standing: *Good Standing*

**Term: 202031 Spring Semester 20-21**

**College:** Thomas R. Kline School of Law

**Major:** Law  
**Minor:**

**Program:** JD-S-LAW **Degree:** JD **Degree Statu:** Awarded

Course	Course Title	Credit Hours	Grade	Rpt	Hon
LAW 646S 001	Mediation and Arbitration	3.00	B		
LAW 654S 942	Lawyering Practice Seminar	2.00	A		
LAW 886S 941	Writing Strategies for the Bar	2.00	CR		
LAW 931S 002	Law Co-op	7.00	CR		

Attd: 14.00 Earned: 14.00 GPA Hrs: 5.00 Pts: 17.00 Term GPA: 3.40

Cum Ernd: 86.00 Cum GPA Hrs: 63.00 Cum Pts: 202.01 Cum GPA: 3.20

Academic Standing: *Dean's List*









This writing sample analyzes the constitutionality of federal regulation 8 U.S.C. § 1373. I believe that this sample shows my ability to analyze federal regulations and jurisprudence, constitutional interpretation and arguments, and lower court precedents. For this analysis, I researched caselaw from many different districts, the reasoning of those Courts, and potential arguments that could be used against my supervisor's argument. My supervising attorney required research in order to proffer a legal strategy for our client—I have received permission to use this writing sample and no information regarding the client or the Institute's strategy is included. The format of this memorandum was requested and does not follow the typical memorandum set-up.

**MEMORANDUM****To:** Amy Marshak**From:** Sarah Rahman**Date:** July 31, 2020**Subject:** Constitutionality of 8 U.S.C. § 1373

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**I. Background**

I believe a defense claiming § 1373 is unconstitutional, will likely be successful, considering the precedent regarding it in the different districts. Much of the time, when § 1373 is being scrutinized and litigated, federal funds are being withheld from states and localities due to their noncompliance with the statute. Courts tend to look past the conditions which are required to be met to receive the funds, and look to whether § 1373 is constitutional as a whole. Lower-level jurisprudent points to it being likely that a § 1373 challenge will be upheld—as long as one is able to argue that it violates the Tenth Amendment and regulates public, rather than private, actors.

**II. Cases Finding 8 U.S.C. § 1373 Unconstitutional**

Cases from a variety of districts have held, on varying grounds, that 8 U.S.C. § 1373 is unconstitutional. Courts have decided in favor of deeming the statute unconstitutional based on Tenth Amendment grounds, the Supreme Court's recent *Murphy* holding regarding the regulation of private actors and preemption of law, state policy decisions, and the spending States would be forced to do if § 1373 is enforced. Forcing States to forgo the ability to create

independent policy choices and regulations fits within the category of Tenth Amendment violations. A majority of Courts have concluded that § 1373, as it stands, is unconstitutional.

**a. Reasonings Used for Finding § 1373 Unconstitutional**

**i. Section 1373 violates the Tenth Amendment Anticommandeering**

**Rule**

The Tenth Amendment of the Constitution reserves any power not given to the federal government for the States. U.S. Const. amend. X. A rule stemming from this amendment, which furthers protection for state sovereignty, is the Anticommandeering Rule; this rule states that "the Federal Government may not compel the States to implement, by legislation or executive action, federal regulatory programs." *County of Ocean v. Grewal*, 2020 U.S. Dist. LEXIS 133903 at \*36 (D.N.J. 2020) (quoting *Printz v. United States*, 117 S. Ct. 2365 (1997)). According to the court in *County of Ocean*, the "Federal Government may not compel the States to implement, by legislation or executive action, federal regulatory programs." *Id.* at \*37. Compelling states to act is not the only way for the federal government to violate the Anticommandeering Clause; "[t]he basic principle that Congress cannot issue direct orders to state legislatures" holds true for precluding states from acting. *City of Chicago v. Sessions*, 321 F.Supp. 3d 855, 867 (N.D. Ill. 2018).<sup>1</sup> In finding § 1373 unconstitutional, the court in *City of Chicago* interpreted the statute as the federal government "requir[ing] the States to govern according to Congress' instructions." *Id.* at 868.<sup>2</sup> Section 1373 issues "direct orders to state legislatures," requiring states to govern as

<sup>1</sup> This case was followed by *City of Chicago v. Barr*, 405 F.Supp. 3d 748 (N.D. Ill. 2019) and *City of Chicago v. Barr*, 961 F.3d 882 (7th Cir. 2020). In the final case, the court found that, because of the Byrne JAG statute being outside of the Attorney General's authority—that being the basis of the lower court's—the court did not need to "reach the constitutionality of § 1373 under the Anticommandeering Doctrine of the Tenth Amendment." *City of Chicago v. Barr*, 961 F.3d 882, 931 (7th Cir. 2020)

<sup>2</sup> The court in *City of Evanston v. Barr*, 412 F.Supp. 3d 873, 879 (E.D. Ill. 2019) reaffirmed its lower court decision because the court had already granted summary judgment for the plaintiff and the court did not feel the need to revisit the constitutionality of § 1373. It also noted that it had dealt with this issue in *City of Chicago v. Barr*, 405 F.Supp. 3d 748 (N.D. Ill. 2019). *Id.* at 880.

instructed by Congress. *Oregon v. Trump*, 406 F.Supp. 3d 940, 972 (D. Or. 2019). The statute is considered a directive to states and localities as a way for the federal government to control State governments and their legislative bodies. *Id.* Courts have viewed § 1373 as stripping power from local policy makers and giving it to “line-level employees who may decide whether or not to communicate with INS.” *City of Chicago v. Sessions*, 321 F.Supp. 3d at 870.

The court also considered the “critical alternative” option states have—being able to choose to not participate in federal programs. *Id.* Section 1373 eliminates this decision-making power by directing the “functioning of local governments in contravention of Tenth Amendment principles.” *Id.* at 872. Pursuant to the Anticommandeering Rule, states have the right to refuse helping the federal government enforce its programs—this refusal does not equate to impeding the federal government in its enforcement of its programs. *Oregon v. Trump*, 406 F.Supp. 3d at 972-73.

## **ii. Section 1373 does not allow states to follow their own policy initiative**

Section 1373 forces States to forgo making rules that fit their own policy objectives, making State governments follow federal government policy initiatives instead. *City of Chicago v. Sessions*, 321 F.Supp. 3d at 869.<sup>3</sup> Not only does § 1373 supplement the federal government’s decision-making power for that of the States’, it also “undermines existing state and local policies and strips local policy makers of the power to decide for themselves whether to communicate with INS.” *City & Cty. Of San Francisco v. Sessions*, 349 F.Supp. at 951.

<sup>3</sup> This consideration, of forcing states’ policy directions to change, affects long standing policy objectives and ripples into different areas of State and local governance. *City of Chicago*, 321 F.Supp. 3d at 862. This court noted the necessity of Chicago as a “sanctuary city.” *Id.* The ordinance maintaining this status is meant to also clarify “communications and enforcement relationship between the City and the federal government as well as the specific conduct City employees are prohibited from undertaking, given the City’s view that such prohibited conduct would ‘significantly harm[] the city’s relationship with immigrant communities.’” *Id.* at 863.

### iii. Section 1373 violates *Murphy* by only regulating public actors

Federal laws only preempt state laws when the federal law at issue governs private actors. *Oregon v. Trump*, 406 F.Supp. 3d 940, 972 (D. Or. 2019); see *Murphy v. NCAA*, 138 S. Ct. 1461 (2018). The court in *County of Ocean* found that § 1373 “regulate[s] only state and local governments and do[es] not, in any way, regulate private actors.” *County of Ocean v. Grewal*, 2020 U.S. Dist. LEXIS 133903 at \*27. Many courts have found that § 1373 is not a preemption provision because “[b]y [its] plain terms, the provision[] affect[s] state and local government entities and officials; [it does] not regulate private actors as *Murphy* requires for preemption.” *Id.* The court in *City & Cty. Of San Francisco v. Sessions* was not persuaded by the Department of Justice’s argument that § 1373 preempted state laws in contravention of it because § 1373 does not regulate or provide extra rights for private actors. 349 F.Supp. 3d 924, 950 (N.D. Ca. 2018).<sup>4</sup>

### iv. Section 1373 forces States to spend money and employ their employees as Congress sees fit

Not only does § 1373 place a heavy monetary burden on State and local governments, it also siphons them of control over their employees. *City of Chicago v. Sessions*, 321 F.Supp. 3d at 869. According to the court in *City of Chicago*, § 1373 “supplants local control of local officers; the statute precludes Chicago and localities like it, from limiting the amount of paid time its employees use to communicate with INS.” *Id.* Section 1373 also “shifts a portion of immigration enforcement costs onto the states.” *City & Cty. of San Francisco v. Sessions*, 349 F.Supp. 3d at 952. By forcing State and local governments to adhere to § 1373, they will have to devote manpower to completing the requests the statute mandates of them, divesting the governments of

<sup>4</sup> This court held that Plaintiffs’ sanctuary laws did not violate § 1373 and that the Department of Justice could not withhold their Byrne’s grants because of certain conditions being read into § 1373, the appellate court affirmed this reasoning. Because of this, the court did not go into the constitutional argument because the lower court dealt with the issue. *City & Cty. Of San Francisco v. Barr*, 2020 U.S. App. LEXIS 21741\* (9th Cir. 2020).

their power to direct their employees as they see fit. *City of Chicago v. Sessions*, 321 F.Supp. 3d at 869.

### **III. Cases Finding 8 U.S.C. § 1373 Constitutional**

Some courts have found § 1373 constitutional, and Attorney Generals have advocated for such a decision on the basis of federalism and preemption—federal law preempting state law, certain Anticommandeering carve-outs, and immigration being a main issue for the federal government. Preemption has not appeared to be a successful tactic in litigation involving the constitutionality of § 1373 but is worth noting, as immigration tends to be an area dominated by the federal government.

#### **a. Arguments and Reasonings Used for Finding § 1373 Constitutional**

##### **i. Federal law preempts state law**

Those in favor of upholding the constitutionality of § 1373 advocate that, as a federal law, the statute preempts any other laws from states or localities that might be in contravention to it. In order to determine whether a federal law might, in some way, preempt a State or locality's law, the court must determine whether the statute at issue is a "preemption provision." *County of Ocean v. Grewal*, 2020 U.S. Dist. LEXIS 133903 at \*26 (N.J. 2020). There are three categories of preemption: express preemption, conflict preemption, and field preemption. *Id.* at 24.

According to the Supreme Court, all three categories work similarly:

Congress enacts a law that imposes restrictions or confers rights on private actors; a state law confers rights or imposes restrictions that conflict with the federal law; and therefore the federal law takes precedence and the state law is preempted.

*Id.* at 26-27.

If a statute is not found to be a preemption provision, it has not conferred rights upon a private actor, and state and local laws do not have to avoid being in contravention to it. *Id.* at 27. An “express preemption” issue comes about when “there is an explicit statutory command that state law be displaced.” *Id.* at 26. A state or local law fails under “conflict preemption” when the law conflicts with a federal law and the former places an obstacle in the achievement of the latter. *Id.* at 42. Lastly, a “field preemption” provision precludes States from regulating conduct in fields where Congress, acting within its constitutional authority, has determined that it must be regulated only by the federal government. *Id.* at 53. According to longstanding trends, the immigration field remains the realm of the federal government, but, in the INA “Congress contemplated that it was the province of the States to determine the extent to which its law enforcement agencies would participate in the enforcement of federal civil immigration law.” *Id.* at 54.

**ii. Section 1373 falls within the information sharing carve-out of the  
Anticommandeering Rule**

According to the defendant in *City of Chicago v. Sessions*, there is a carve-out in the Anticommandeering Doctrine which allows for the preemption of statutes requiring information sharing. 321 F.Supp. 3d 855, 871 (N.D. Ill. 2018). This carve-out, according to Sessions, comes from the dicta in *Printz v. United States*, which the Court finds neither binding nor persuasive; where the Court did not elaborate when it stated that it would not decide on the constitutionality of “purely ministerial reporting requirements imposed by Congress on state and local authorities.” *Id.* (quoting *Printz v. United States*, 521 U.S. 898, 936 (1997)). This argument did not persuade the court because of the nature of the carve-out—it was not elaborated upon in *Printz*, nor was it anything more than dicta in the opinion. *Id.*

### iii. Immigration falls within the realm of the federal government

In *New York v. United States DOJ*, the court stated that the Supreme Court has made it clear that, in the realm of immigration policies and programs, the federal government has “broad” and “preeminent” power, codified in the statutory scheme. 951 F.3d 84, 90 (2d Cir. 2020). The court also mentions that states may not “pursue policies that undermine federal law.” *Id.* at 91. The court goes further to say that “[a] commandeering challenge to a federal statute depends on there being pertinent authority “reserved to the States,”” further stating that the courts should identify powers reserved to the states in the immigration context, giving them boundaries, within which they may legislate. *Id.* at 113. The court did consider § 1373 being unconstitutional on its face because the statute does not “violate the Tenth Amendment as applied here.” *Id.* at 114.

## Applicant Details

First Name **Liliana**  
 Middle Initial **I**  
 Last Name **Ramirez**  
 Citizenship Status **U. S. Citizen**  
 Email Address [ramirez.liliana94@yahoo.com](mailto:ramirez.liliana94@yahoo.com)

Address

Address
Street
<b>4325 Gingham Ct</b>
City
<b>Alexandria</b>
State/Territory
<b>Virginia</b>
Zip
<b>22310</b>
Country
<b>United States</b>

Contact Phone Number **7039924035**

## Applicant Education

BA/BS From **Duke University**  
 Date of BA/BS **May 2016**  
 JD/LLB From **Washington University School of Law**  
[http://www.nalplawsonline.org/ndlsdir\\_search\\_results.asp?lscd=42604&yr=2014](http://www.nalplawsonline.org/ndlsdir_search_results.asp?lscd=42604&yr=2014)  
 Date of JD/LLB **May 15, 2020**  
 Class Rank **50%**  
 Law Review/Journal **Yes**  
 Journal(s) **Washington University Journal of Law & Policy**  
 Moot Court Experience **No**

## Bar Admission

Admission(s) **District of Columbia**

### **Prior Judicial Experience**

Judicial Internships/Externships	<b>Yes</b>
Post-graduate Judicial Law Clerk	<b>No</b>

### **Specialized Work Experience**

### **References**

- (1) Carolina Kupferman: ckupferm@debevoise.com; 212-909-6274
- (2) Mark Flinn: mflinn@debevoise.com; 202-383-8005

**This applicant has certified that all data entered in this profile and any application documents are true and correct.**

Liliana Ramirez  
4325 Gingham Ct.  
Alexandria, VA 22310  
703-992-4035  
ramirez.liliana94@yahoo.com

April 7, 2022

The Honorable Elizabeth W. Hanes  
U.S. District Courthouse  
701 East Broad Street  
Richmond, VA 23219

Dear Judge Hanes:

I am writing to apply for a clerkship in your chambers, either beginning in August 2022 or for your next available position. I am a 2020 graduate of the Washington University in St. Louis School of Law, where I received a Certificate in Business Law and was an Executive Notes Editor on the *Washington University Journal of Law and Policy*. More recently I joined the White Collar & Regulatory Practice Group at a Washington D.C. law firm, but would welcome the opportunity to practice in the federal district that encompasses where I have lived most of my life. It would be an honor to clerk for a federal magistrate judge, who does not take the longlasting impact that her decisions have on the parties before her lightly.

After spending Spring 2019 researching and writing memoranda for a U.S. District Court Judge in the Eastern District of Missouri, I am confident that I could take that learning experience along with the skills gained during my last year working on pro bono and billable matters at a Washington D.C. law firm to contribute meaningfully to your chambers as a law clerk.

Enclosed please find my references, résumé, transcript, and writing sample. The writing sample is an appellate brief I drafted for a Legal Practice assignment during the Spring 2018 Semester.

I would welcome any opportunity to interview with you. Thank you for your time and consideration.

Sincerely,  
Liliana Ramirez

**LILIANA RAMIREZ**

4325 Gingham Ct., Alexandria, VA 22310  
(703) 992-4035; ramirez.liliana94@yahoo.com

**EDUCATION**

**Washington University in St. Louis Law School**, St. Louis, MO

J.D., May 2020

Honors: Scholar in Law Award; Business Law Certificate

Activities: *Washington University Journal of Law and Policy*, Executive Notes Editor  
Latin American Law Students Association, President

**Duke University**, Durham, NC

A.B., Political Science, May 2016

Minors: French; Russian

Honors: Duke University Political Science Alona E. Evans Prize in International Law

Activities: Duke in DC: Policy, Leadership, and Innovation Program  
Duke in Russia Summer Program  
Danish Institute for Study Abroad: Justice and Human Rights Program  
Duke University Debate Team

**EXPERIENCE**

**Debevoise & Plimpton**, Washington, DC

Fall 2020–Present

*Litigation Associate*. Contributing author to FCPA Update. Draft court filings and client communications in pro bono matters. Conduct legal research and analysis in white collar regulatory matters.

**Washington University in St. Louis Law School**, St. Louis, MO

Fall 2018–Spring 2020

*Peer Academic Advisor*. Provided academic support to students in office hours and small group discussions.

*Peer Career Advisor*. Provided feedback to students on cover letters, resumes, and writing samples.

**Debevoise & Plimpton**, Washington, DC

Summer 2019

*Summer Associate*. Researched country conditions and assisted in interviews in an asylum matter. Researched and drafted memoranda relevant to SEC investigations.

**U.S. District Court for EDMO**, St. Louis, MO

Spring 2019

*Semester Law Clerk*. Researched and wrote bench memoranda on motions to dismiss and a habeas petition.

**U.S. Attorney's Office for EDPA**, Philadelphia, PA

Summer 2018

*Legal Intern*. Observed witness depositions and court proceedings. Conducted research and drafted legal briefs in civil and criminal matters, including on whistleblowers and escheatment.

**U.S. Department of Justice – Criminal Division**, Washington, DC

Summer 2016–Spring 2017

*Paralegal*. Conducted document review in FCPA matters. Supported prosecutors during pre-trial and trial process, including by tracking discovery documents, assisting in witness preparation, and managing Trial Director during trial.

**London Center for Policy Research**, Washington, DC

Summer 2015

*Intern*. Provided supervisors with memoranda from meetings on Capitol Hill.

**U.S. Agency for International Development**, Washington, DC

Spring 2015

*Intern*. Developed a partner tracker for the public engagement team for Ebola-related press and media engagements.

**U.S. Senator Mark R. Warner**, Washington, DC

Summer 2014

*Intern*. Conducted research and drafted memoranda on sexual assault on college campuses and immigration reform.

**SKILLS AND INTERESTS**

Fluent in Spanish and proficient in French. Interests include hiking, trail running, listening to podcasts (ranging from Freakonomics to Stuff You Missed in History Class), and stand-up comedy.

**Liliana Ramirez**  
**Washington University School of Law**  
**Cumulative GPA: 3.64**

**Fall 2017**

COURSE	INSTRUCTOR	GRADE	CREDIT UNITS	COMMENTS
Contracts	Greenfield	A+	4.0	
Criminal Law	Kalhan	A-	4.0	
Legal Practice I: Objective Analysis and Reasoning	Shields	B+	2.0	
Legal Research Methodologies I	Bondareff	CIP	0	
Torts	Tamanaha	A-	4.0	

**Spring 2018**

COURSE	INSTRUCTOR	GRADE	CREDIT UNITS	COMMENTS
Civil Procedure	Drobak	A	4.0	
Constitutional Law I	La Pierre	A-	4.0	
Legal Practice II: Advocacy	Shields	B+	2.0	
Legal Research Methodologies	Bondareff	P	1.0	
Negotiation	Tokarz	P	1.0	
Property	Su	A	4.0	

**Fall 2018**

COURSE	INSTRUCTOR	GRADE	CREDIT UNITS	COMMENTS
Corporate Compliance & Regulatory Enforcement	D'Onfro	B	3.0	
Corporations	Lambert	B+	4.0	
Evidence	Rosen	A-	3.0	
Federal Courts	Hollander-Blumoff	A-	4.0	
Journal of Law and Policy	Tokarz	CR	1.0	

**Spring 2019**

COURSE	INSTRUCTOR	GRADE	CREDIT UNITS	COMMENTS
Administrative Law	Levin	A-	3.0	
Journal of Law and Policy	Tokarz	CR	1.0	
Judicial Clerkship Externship	Keuhn	P	3.0	
Securities Regulation	Wagner	B+	3.0	
The Law and Policy of the Rails-to-Trails Conservancy Movement	Nixon	P	1.0	
UCC: Article 2	Greenfield	A	3.0	

**Fall 2019**

COURSE	INSTRUCTOR	GRADE	CREDIT UNITS	COMMENTS
Commercial Law	Keating	B+	3.0	
Ethics and Professionalism in the Practice of Law	Pratzel	B+	2.0	
Journal of Law and Policy	Tokarz	CR	2.0	
Law and Theology Seminar	Inazu	A-	3.0	
Pretrial Practice and Settlement	Walsh	HP	3.0	
The Roberts Court	Epstein; Liptak	A	1.0	

**Spring 2020**

COURSE	INSTRUCTOR	GRADE	CREDIT UNITS	COMMENTS
Corporate and White Collar Crime	Albus; Goldsmith; Harlan	CR	2.0	
Criminal Procedure: Adjudication	Epps	CR	3.0	
Journal of Law and Policy	Tokarz	CR	2.0	
Law and Policy of Electronic Information	Kahn	B+	1.0	
Real Estate Practice, Negotiation and Drafting	Feder	CR	2.0	
State Level Lobbying	Shabsin	P	3.0	

Business Law Certificate (May 2020)

**Grading System Description**

A+ 4.30-4.00; A 3.94-3.76; A- 3.70-3.58; B+ 3.52-3.34; B 3.28-3.16; B- 3.10-3.04; C+ 2.98-2.92; C 2.86-2.80; D 2.74; F 2.68-2.50

HP3.94 or HP High Pass; P Pass; LP 2.98 or LP Low Pass; AUD Audit; PW Permitted Withdrawal; RW Required Withdrawal; N Grade no recorded; I Incomplete; CR or CR# Credit; NCR or NCR# No Credit; CIP Course in Progress; IP In Progress; RX Re-examined in course; R Course Repeated

**Liliana Ramirez**

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**WRITING SAMPLE**

The attached writing sample is based on a Legal Practice assignment I completed during the Spring 2018 Semester. I represented the Appellant Arthur Collette. The purpose of the assignment was to research and draft an appellate brief arguing that the district court erred in denying Collette's Motion to Suppress Identification Evidence. The Title Page and the Table of Contents have been omitted for this writing sample.

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OPINION BELOW

The United States District Court for the Northern District of California denied Arthur Collette's Motion to Suppress Identification Evidence. The court entered judgment against Collette on one count of second degree murder in violation of 18 U.S.C. § 1111(a)(2015), *United States v. Collette*, Case No. CR17-0887, is unreported and is set forth in the Record. R. at 15.

ISSUE PRESENTED

The district court erred in denying Collette's motion to suppress Blalock's uncertain selection, when under the totality of the circumstances, the line-up procedure was so impermissibly suggestive that it resulted in Blalock's misidentification of Collette in derogation of his right to due process.

STATEMENT OF THE CASE

On July 2nd, 2017, a chaotic fight broke out between members of a biker group at the dimly lit, crowded Crossroads Tavern in Petaluma. R. at 5. Most of the fifteen to twenty men involved in the chaos were wearing bandanas, leather biker jackets, similar pants, and tattoos. R. at 7. Within a matter of seconds, an undercover ATF agent, Ray Searcy, was fatally stabbed. *Id.* FBI agent Evelyn Kellogg, a longtime friend of Searcy, was called to lead the investigation. R. at 12. Kellogg spoke with

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the only two known witnesses: Rose Johnson, an elderly woman familiar with some of the members of the biker group, and Kari Blalock, a bartender who saw the chaotic, short fight break out from twelve feet away. R. at 8-9, 13. Although Johnson was physically present, she had her back turned away from the fight and therefore did not see what was going on. R. at 13. Johnson mentioned to Kellogg that the biker group's leader, Arthur Collette, had been at Crossroads earlier that night. R. at 13-14. Blalock saw the suspect for twenty seconds amidst the crowd of bikers and described what she remembered to Kellogg; the man had a black mustache, was between six feet and six feet and three inches, rail thin, with a nose piercing, leather biker jacket, bandana, and no tattoos that stood out. R. at 8-9.

Nineteen days later, Blalock stood before a six-individual line-up. R. at 10. Kellogg asked Blalock which of the men in the line-up was the suspect, but after several minutes she was still unsure, as it had been, "a pretty long time," since the crime. *Id.* The procedure persisted with Kellogg asking if she could refresh Blalock's recollection, and reminding her that her previous description mentioned a piercing. *Id.* Blalock then narrowed down the six individuals to two, who had nose piercings and mustaches, and eventually selected Collette from the two because he was about the same height as the suspect, despite the prominent spider tattoo on his neck that Blalock's 20-20 vision seemingly missed at the time of the

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crime. R. at 10-12. Even then, Blalock was only seventy-five percent certain of her selection. R. at 11.

### SUMMARY OF THE ARGUMENT

Protection of Collette's constitutional right to due process was hinged on the reliability of Kari Blalock's uncertain selection resulting from FBI agent Evelyn Kellogg's impermissibly suggestive line-up procedure. U.S. Const. amend. V. The suggestive line-up procedure led to the misidentification of Collette by a busy bartender, who observed the suspect for a mere twenty seconds from twelve feet away in a crowded, dimly lit bar with more than fifteen similarly- dressed men. Blalock's selection of Collette was made after Kellogg's prompting, as she reminded her of her previous description and implied the suspect was in the line-up; even so Blalock's selection revealed a significant discrepancy between her previous description and her selection: a prominent spider tattoo on Collette's neck was not mentioned in Blalock's previous description. Despite the suggestiveness of Kellogg's procedure, Blalock was only seventy-five percent certain of the selection she made nineteen days following the crime. Probable cause for Collette's conviction was established solely on the basis of the only eyewitness testimony provided despite that, under the totality of the circumstances, Kellogg's impermissibly suggestive line-up procedure far outweighed any semblance of

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reliability in Blalock's selection. The district court's refusal to grant Collette's Motion to Suppress Identification Evidence led to the erroneous admittance of Blalock's selection into evidence in direct violation of Collette's right to due process. As a result, Collette was unjustly convicted without due process.

### STANDARD OF REVIEW

The constitutionality of pretrial identification procedures is reviewed *de novo*. *See, e.g., U.S. v. Montgomery*, 150 F.3d 983, 992 (9th Cir. 1998).

### ARGUMENT

- I. THE TRIAL COURT ERRED WHEN IT DENIED COLLETTE'S MOTION TO SUPPRESS BLALOCK'S UNCERTAIN SELECTION BECAUSE THE CORRUPTING EFFECT OF KELLOGG'S IMPERMISSIBLY SUGGESTIVE LINE-UP PROCEDURE FAR OUTWEIGHS THE RELIABILITY OF BLALOCK'S QUESTIONABLE SELECTION, THEREBY VIOLATING COLLETTE'S CONSTITUTIONAL RIGHT TO DUE PROCESS.

Suppression of identification testimony is mandated when, as in this case, the impermissibly suggestive procedure outweighs the reliability of the sole witness' testimony such that the defendant's right to due process is violated. *Neil v. Biggers*, 409 U.S. 188, 199 (1972); *United States v. Bagley*, 772 F.2d 482, 492 (9th Cir. 1985). Whether identification testimony must be suppressed depends on whether under the totality of the circumstances the corrupting effect of the impermissibly

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suggestive procedure outweighs the reliability of the testimony. *Biggers*, 409 U.S. at 199; *Manson v. Brathwaite*, 432 U.S. 98, 114 (1977). It the likelihood of irreparable misidentification that violates an individual's right to due process; a right that is especially important to protect in criminal proceedings where the consequences of conviction may result in a prison sentence. *Simmons v. United States*, 390 U.S. 377, 384 (1968). Collette's right to due process was violated as a direct result of Blalock's misidentification caused by Kellogg's impermissibly suggestive line-up procedure.

- A. Kellogg's line-up procedure was impermissibly suggestive when only two of the six men shared any characteristics with Blalock's previous description and Kellogg's statements to Blalock strongly encouraged her to make a selection from the line-up.

Miscarriages of justice result where an impermissible degree of suggestiveness is used during line-up procedures because of the high likelihood misidentification will result. *United States v. Wade*, 388 U.S. 218, 229 (1967). Impermissibly suggestive procedures compromise the goal of avoiding misidentification, which is necessary to protect an individual's right to due process. *Simmons*, 390 U.S. at 384. As in this case, the threat of misidentification is augmented when "the witness' opportunity for observation was insubstantial, and thus his susceptibility to suggestion the greatest." *Wade*, 338 U.S. at 229. The effects of impermissibly suggestive procedures on an individual's right to due process are significant

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because once a witness has selected an individual from a line-up it is improbable that she will change her mind, which effectively strips the credibility of an individual's statement of innocence even if he was misidentified. *Id.* It is particularly important to protect an individual's right to due process where the probable cause established for conviction relies on the testimony of one eyewitness, and the suggestive line-up procedure is conducive to misidentification. *See Simmons*, 390 U.S. at 383. Ultimately, the totality of the circumstances determine whether an identification procedure is so impermissibly suggestive as to give rise to a substantial likelihood of misidentification. *Stovall v. Denno*, 388 U.S. 293, 302 (1967).

Kellogg's impermissibly suggestive conduct led to Blalock misidentifying Collette as the suspect. Blalock observed the six men in the line-up for several minutes without recognizing or selecting any of the men on her own, and it was only after Kellogg's impermissibly suggestive conduct that Blalock selected Collette. R. at 9-10. Kellogg's choice of words encouraged Blalock to make a selection from the six men in the line-up; rather than using neutral language to ask whether one of the six men in the line-up was the suspect, Kellogg asked, "which of *these* men..." R. at 10. *Cf. United States v. Bowman*, 215 F.3d 951, 966 (9th Cir. 2000) (finding procedure not suggestive when witnesses were told that they need not make an

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identification if they were not confident). Blalock was unable to positively identify any of the men from the line-up on her own, but instead of ending the procedure, Kellogg asked if she could refresh Blalock's recollection and reminded her that in her previous description she mentioned a piercing; of the six men in the line-up only two had nose piercings. R. at 10-11. *Foster v. California*, 394 U.S. 440, 89 (1969) (finding the lineup was suggestive in part because the defendant was much taller than the other participants and was wearing a jacket similar to one worn during the crime); *Simmons*, 390 U.S. at 382-83 (concluding that procedures that emphasize the focus upon a single individual increase the danger of misidentification). Blalock stated that Kellogg's reminder, "certainly narrowed it down," and she made her final selection merely because one of the men was, "a little bit taller...and was about the same size," as the suspect she previously described, which implies her selection of Collette was done through a process of elimination rather than recognition. R. at 11; *See United States v. Field*, 625 F.2d 862, 869 (9th Cir. 1980) (the obviously suggestive conduct of the FBI agent in leading the witnesses toward selection of Field's photograph was a critical factor in the court's conclusion that admitting the identification of Field's during testimony would be a violation of his right to due process of law); *see also United States v. Monks*, 774 F.2d 945 (9th Cir. 1985) (requiring persons of similar race and features be depicted in lineup in order to admit pretrial identification).

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B. Blalock's uncertain selection of Collette emphasizes the lack of reliability of her testimony.

The reliability of an identification made during a line-up procedure is determined based on five factors set forth in *Biggers*:

The opportunity of the witness to view the criminal at the time of the crime; the witness' degree of attention; the accuracy of the witness's prior description of the criminal; the level of certainty demonstrated by the witness at the confrontation; and the length of time between the crime and the confrontation.

*Biggers*, 409 U.S. at 199-200. Using the *Biggers* factors, the reliability of Blalock's uncertain selection of Collette is wholly unreliable; she saw the suspect from twelve feet away in a crowded, dimly lit bar for twenty seconds; her attention preceding the incident was on her bartending duties; while a seemingly detailed description was provided, there were at least fifteen men wearing similar biker clothing; she was only seventy-five percent certain of her selection during the confrontation; nineteen days passed between the incident and the confrontation. Concluding that Blalock's uncertain selection of Collette is reliable creates serious cause for concern because she is the sole eyewitness upon whom Collette's conviction rests.

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In *Field*, in the presence of several witnesses, two men of different heights robbed a bank. The robbery lasted for about two minutes during morning hours. Two months after the robbery, Guerin and Kotzen identified Field as the shorter robber during trial. During the robbery, Guerin saw the shorter robber twice for a few seconds from a distance of twenty feet, and when shown a six-individual photo spread narrowed down the spread to two individuals most resembling the shorter robber, but was ultimately unable to make a positive identification. After overhearing an FBI agent identify Field as an individual arrested for the robbery and seeing Field in handcuffs leading up to the trial, Guerin made her first positive identification of Field during trial. Kotzen observed the shorter robber for one to two minutes from a distance of twenty-five feet during the robbery, and when shown a six-individual photo spread did not select Field's photograph at which point an FBI agent told him his selection was incorrect. Kotzen then selected Field's photograph and the FBI agent confirmed his selection. *Field*, 625 F.2d at 865.

The court held Guerin and Kotzen's in-court identification testimony was impermissibly tainted by pretrial procedures and admission of such testimony violated Field's right to due process of law. *Id.* at 872. The court reasoned Guerin and Kotzen's identifications of Field were unreliable when examined according to

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the *Biggers* test. *Id.* at 868. The court emphasized the reliability of the identifications was weakened by expressed uncertainty presented by Guerin and Kotzen; Guerin merely pointed to two possible photographs while Kotzen's positive identification was a direct result of prompting from the FBI agent. *Id.* at 869.

In *U.S. v. Simoy*, 998 F.2d 751, 751-752 (9th Cir. 1993), in an unlit breezeway next to a bank, two men robbed two individuals. Davis, an employee stationed at the security office located in the same building as the bank was able to see one of the suspects from forty-five feet away. Davis provided a detailed description of the assailant six days later to a police sketch artist. Davis' description resulted in a sketch that closely resembled Simoy's photo. An FBI agent then held up a photograph of Simoy for Davis, but Davis concluded that while "the person in the picture closely resembled that person that [he] saw," he "wasn't a hundred percent sure." *Id.* at 752. Two weeks later, Davis was shown a six-individual photo spread, which included a different photograph of Simoy, which he stated, "closely resembled the person that [he] had seen that night." *Id.* At trial, Davis positively identified Simoy. *Id.* The court held that under the totality of the circumstances, Davis' identification was reliable despite the suggestive pretrial procedure. *Id.* at 753. The court reasoned that while Davis' identification was not conclusively

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reliable under each individual reliability factor proposed by Biggers, it was so strong in three of the five factors that it outweighed the weakness of the other two factors. Davis' poor viewing opportunity and lack of one-hundred percent certainty were outweighed by his high degree of attention during the time of the crime, his highly accurate description of Simoy, and the short amount of time between the crime and the confrontation. The court emphasized Davis' lack of certainty would have raised serious doubt as to the reliability of his identification had he not been able to provide such a detailed and accurate description of the assailant. *Id.*

Like in *Simoy* and unlike in *Field*, Blalock's opportunity to view the suspect undermines her reliability because she saw him from twelve feet away in a crowded, dimly lit, late night environment of the biker bar where her viewing conditions were very poor and lasted mere seconds. *See United States v. Gregory*, 891 F.2d 732 (9th Cir. 1989) (where the witness had an unobstructed view of the robber at close range for thirty seconds the court was persuaded by the reliability of the witness's identification). In fact, Blalock's opportunity to view the assailant is significantly poorer than the witnesses in *Field*, one of which had an unobstructed view of the robber for almost two minutes in a non-crowded adequately lit bank. Blalock was looking into a crowd of similarly dressed bikers in a dimly lit bar. While the bar was at least dimly lit and Blalock was closer than

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the forty-five feet between Davis and the suspect in *Simoy*, her viewing opportunity was just as poor as Davis' because she was looking into a crowd with a lot of chaos going on, whereas Davis was looking at a lone individual.

Unlike in *Field* and *Simoy*, Blalock's degree of attention directed at the suspect is unreliable because she was primarily concerned with bartending at the time preceding the fight, and the subsequent stabbing was unexpected. Blalock's focus was on her job not on the individual bikers in the bar, and while she has an archery background that would seemingly make her keen to detail, the context is relevant because archery requires extended, significant concentration on a target, which in the context of a bar without a "target" Blalock's degree of attention is like that of any other bystander. In *Field*, the witnesses gave their undivided attention to the robbers for almost two whole minutes; in *Simoy*, Davis was a security officer trained to be on the lookout for crime, therefore while the situation was unexpected, he was at least on notice.

Like in *Field* and unlike in *Simoy*, Blalock's description of the suspect is seemingly detailed as to the suspect's bandana and clothing, height, mustache, and nose piercing, which means her selection of Collette must be incorrect because she failed to describe the prominent spider tattoo on his neck. Additionally, because at

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least fifteen other bikers were wearing similar clothing, Blalock's description is arguably vague. In *Field*, the witnesses provided detailed descriptions of the robber and made mentions of him being of Mexican descent, yet later identified Field who was not of Mexican descent. Both in *Field* and here, uncertainty arises from the discrepancies between the descriptions and the individual ultimately selected. Contrastingly, in *Simoy*, the accuracy of Davis' description of the suspect was sufficient for a police sketch artist to draw a sketch that bore significant resemblance to Simoy, and Davis' later identification was of Simoy, therefore no discrepancy existed between his description and his identification.

Like in *Field* and *Simoy*, Blalock remained uncertain of her selection during the six- individual line-up and even after Kellogg refreshed her recollection by reminding her of her previous description Blalock was only seventy-five percent certain of her selection. In *Simoy*, Davis' less than one-hundred percent certainty in his identification of Simoy was counterbalanced by the strength of his highly accurate description of Simoy and the short amount of time between the crime and the confrontation, whereas Blalock's uncertainty is not counterbalanced by an overwhelming strength in any of the other *Biggers* reliability factors.

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As the sole eyewitness, the certainty in Blalock's selection is imperative to the protection of Collette's right to due process, whereas in *Field* there were two uncertain witnesses who both picked the same person and the court still determined their selections were unreliable. In *Simoy*, despite the court's determination that Davis' identification was reliable under the totality of the circumstances, it went out of its way to emphasize the significant role certainty plays in reliability. *See United States v. Langford*, 802 F.2d 1176, 1182 (9th Cir. 1986) ("[J]uries almost unquestioningly accept eyewitness testimony.").

Unlike in *Field* and *Simoy*, nearly three weeks passed between the crime and Blalock's confrontation thereby weakening the reliability of her selection. *See, e.g., Manson v. Brathwaite*, 432 U.S. 98, 115-16 (1977) (reasoning that the more time between crime and confrontation makes reliability more suspect). Contrastingly, in both *Field* and *Simoy* the amount of time between the crime and the confrontation for each of the witnesses was roughly one week. In *Field*, despite the confrontation being about one week after the crime the witnesses were unable to make a positive identification from the six-individual photo spread – at least not without prompting. In *Simoy*, the Davis was hesitant in his identification of Simoy despite the short five- day span between the crime and the confrontation. Each passing day

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further diminishes the memory of an eyewitness and the concern is especially grave where there is but a single eyewitness, as is the case here.

C. The reliability of Blalock's questionable selection is outweighed by the corrupting effect of Kellogg's impermissibly suggestive line-up procedure.

Collette's constitutionally protected right to due process depends on the balancing of the corrupting effect of Kellogg's impermissibly suggestive line-up procedure against the reliability of Blalock's selection. Blalock's selection was not based upon observations at the time of the crime and was instead induced by Kellogg's impermissibly suggestive conduct during the line-up procedure. Blalock's selection boiled down to a process of elimination, not identification, as a direct result of Kellogg's impermissibly suggestive line-up procedure; therefore, protecting Collette's right to due process requires Blalock's testimony be inadmissible.

### CONCLUSION

Because probable cause to arrest Collette was established based solely on Blalock's misidentification of Collette it is necessary to reverse the district court's denial of the Motion to Suppress Identification Evidence in order to protect Collette's constitutional right to due process.

## Applicant Details

First Name **Trevor**  
 Last Name **Rhodes**  
 Citizenship Status **U. S. Citizen**  
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**Country**  
**United States**

Contact Phone Number **6014972779**

## Applicant Education

BA/BS From **Mississippi State University**  
 Date of BA/BS **December 2018**  
 JD/LLB From **Georgetown University Law Center**  
[https://www.nalplawschools.org/employer\\_profile?FormID=961](https://www.nalplawschools.org/employer_profile?FormID=961)  
 Date of JD/LLB **May 15, 2022**  
 Class Rank **School does not rank**  
 Law Review/Journal **Yes**  
 Journal(s) **The Georgetown Law Journal**  
 Moot Court Experience **No**

## Bar Admission

## Prior Judicial Experience

Judicial Internships/  
Externships      **No**  
Post-graduate Judicial  
Law Clerk      **No**

## **Specialized Work Experience**

### **Recommenders**

Bloche, Maxwell  
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### **References**

Professor Rima Sirota (202-662-9841) and rs367@georgetown.edu  
Professor Joseph Micallef (202-736-8492) and jmicallef@sidley.com  
Professor Maxwell Bloche (202-552-9123) and  
bloche@georgetown.edu

**This applicant has certified that all data entered in this profile and  
any application documents are true and correct.**

Trevor Rhodes  
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June 12, 2021

The Honorable Elizabeth W. Hanes  
United States District Court, District of Arizona  
701 East Broad Street, 5th Floor  
Richmond, Virginia 23219

Dear Judge Hanes:

I am a third-year student at Georgetown University Law Center and a member of *The Georgetown Law Journal*. I am writing to apply for a 2022-2024 clerkship in your chambers.

I would like to clerk in Richmond because I want to build my career in the DMV area. I have enjoyed living in D.C., and I would like to live here for the long term. I enjoy the complexity and variety of the legal issues in the area. Additionally, I want to practice intellectual property law. I believe this interest will serve well the Eastern District of Virginia, having a heavy patent docket.

I attribute many of my accomplishments thus far to an eye disease which limits my vision. I was diagnosed with retinitis pigmentosa in 2013. My vision was normal up to this point in my life, and I focused my energies on winning the admiration of people. Initially, I was devastated by the prospect of losing my vision. But by 2018, my perspective shifted. Now, I focus on doing what I can to become a better person and a good lawyer. I have developed a keen determination, grown fiercely resilient, and strengthened my problem-solving abilities as I find ways to overcome the obstacles resulting from my condition.

Enclosed please find a copy of my resume, my law school transcript, and a writing sample. Letters of recommendation from Professors Rima Sirota (202-662-9841), Joseph Micallef (202-736-8492), and Maxwell Bloche (202-552-9123) are attached.

If you have any questions, please feel free to contact me at [tjr86@georgetown.edu](mailto:tjr86@georgetown.edu) or (601-497-2779). Thank you very much for considering my application.

Respectfully,

Trevor Rhodes

## Trevor Rhodes

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### EDUCATION

#### Georgetown University Law Center

*Juris Doctor*

GPA: 3.60

Journal: *The Georgetown Law Journal*, Executive Editor for the *Annual Review of Criminal Procedure*

Clinic: Civil Litigation Clinic

Activities: The Federalist Society; Health Law Society, *Treasurer*; World Health Organization Negotiation Simulation; Student Intellectual Property Law Association; COVID-19 Task Force

Washington, D.C.

Expected May 2022

#### Mississippi State University

*Bachelor of Science* in Biomedical Engineering, Minor in Pre-Law

Honors: President's Scholar; Dean's Scholar

Senior Project: Designed and constructed titanium screw used in canine neurosurgery

Study Abroad: IMT Mines Albi Engineering School; Albi, France; Studied engineering economics

Starkville, MS

December 2018

### EXPERIENCE

#### U.S. Department of Justice

*Legal Intern, Civil Division, Fraud Section*

Washington, D.C.

Upcoming Fall 2021

#### U.S. Department of Health and Human Services

*Legal Intern, Office of Global Affairs, Trade and Health Office*

Washington, D.C.

Summer 2021

- Expected duties include reviewing trade agreements for intellectual property and pricing issues related to pharmaceutical products

#### U.S. Attorney's Office for the District of Columbia

*Legal Intern, Violent Crimes and Narcotics Trafficking Section*

Washington, D.C.

Spring 2021

- Gathered evidence from online sources and confidential interviews; clearly and concisely compiled the important information in memoranda for presentation to prosecutors
- Drafted argument, later inserted into a brief, identifying a "crime of violence" under Sentencing Guidelines
- Singlehandedly developed case narratives when drafting motions opposing a defendant's motion to suppress

#### U.S. Department of Health and Human Services

*Legal Intern, Office of the National Coordinator (ONC)*

Washington, D.C.

Summer 2020

- Researched and analyzed state legislation and administrative rules affecting "information blocking"
- Drafted research report detailing above findings for intraoffice circulation and educated ONC staff about the nexus of state and federal policies and laws affecting "information blocking"
- Drafted responses to stakeholder questions pertaining to ONC's final rule implementing the CURES Act

#### Liberty National Life Insurance

*Insurance Agent*

Columbus, MS

January 2019-April 2019

- Persuasively conveyed important aspects of policies to existing and potential clients

#### Overstreet Properties

*Property Management Assistant*

Starkville, MS

September 2016-September 2018

- Worked part time to offset college expenses
- Supervised property maintenance and upkeep, including managing supplies and hiring employees

### INTERESTS

**Interests**: The NFL (go Cowboys!), fantasy football, podcasts like Planet Money, reading self-improvement books

This is not an official transcript. Courses which are in progress may also be included on this transcript.

Record of: Trevor J. Rhodes  
GUID: 824826524

Course Level: Juris Doctor

Entering Program:

Georgetown University Law Center  
Juris Doctor  
Major: Law

Subj	Crs	Sec	Title	Crd	Grd	Pts	R
----- Fall 2019 -----							
LAWJ	001	94	Civil Procedure	4.00	B+	13.32	
			Kevin Arlyck				
LAWJ	002	41	Contracts	4.00	B	12.00	
			Gregory Klass				
LAWJ	004	94	Constitutional Law I: The Federal System	3.00	B+	9.99	
			Laura Donohue				
LAWJ	005	42	Legal Practice: Writing and Analysis	2.00	IP	0.00	
			Rima Sirota				
			EHrs QHrs QPts GPA				
Current			11.00 11.00 35.31 3.21				
Cumulative			11.00 11.00 35.31 3.21				

Subj	Crs	Sec	Title	Crd	Grd	Pts	R
----- Spring 2020 -----							
LAWJ	003	42	Criminal Justice	4.00	P	0.00	
			Rosa Brooks				
LAWJ	005	42	Legal Practice: Writing and Analysis	4.00	P	0.00	
			Rima Sirota				
LAWJ	007	94	Property	4.00	P	0.00	
			Sheila Foster				
LAWJ	008	94	Torts	4.00	P	0.00	
			Gary Peller				
LAWJ	1603	50	How to Regulate	3.00	P	0.00	
			David Hyman				
LAWJ	611	06	World Health Assembly Simulation: Negotiation Regarding Climate Change Impacts on Health	1.00	P	0.00	

Vicki Arroyo

Mandatory P/F for Spring 2020 due to COVID19

			EHrs QHrs QPts GPA				
Current			20.00 0.00 0.00 0.00				
Annual			31.00 11.00 35.31 3.21				
Cumulative			31.00 11.00 35.31 3.21				

Subj	Crs	Sec	Title	Crd	Grd	Pts	R
----- Fall 2020 -----							
LAWJ	1625	05	Technology Policy and Practice	2.00	B+	6.66	
			Hillary Brill				
LAWJ	206	08	Health Law and Policy	4.00	A	16.00	
			Gregg Bloche				
LAWJ	317	08	Negotiations Seminar	3.00	A-	11.01	
			Stephen Altman				
LAWJ	332	07	Patent Law	3.00	A	12.00	
			Joseph Micallef				
			EHrs QHrs QPts GPA				
Current			12.00 12.00 45.67 3.81				
Cumulative			43.00 23.00 80.98 3.52				

-----Continued on Next Column-----

Subj	Crs	Sec	Title	Crd	Grd	Pts	R
----- Spring 2021 -----							
LAWJ	121	09	Corporations	4.00	A	16.00	
			Urska Velikonja				
LAWJ	1491	05	Externship I Seminar (J.D. Externship Program)		NG		
			John Thorlin				
LAWJ	1491	80	~Seminar	1.00	P	0.00	
			John Thorlin				
LAWJ	1491	82	~Fieldwork 3cr	3.00	P	0.00	
			John Thorlin				
LAWJ	215	09	Constitutional Law II: Individual Rights and Liberties	4.00	A-	14.68	
In Progress:							
LAWJ	1028	08	Health Care Fraud and Abuse Seminar	2.00	In Progress		
----- Transcript Totals -----							
			EHrs QHrs QPts GPA				
Current			12.00 8.00 30.68 3.84				
Annual			24.00 20.00 76.35 3.82				
Cumulative			55.00 31.00 111.66 3.60				
----- End of Juris Doctor Record -----							

Georgetown Law  
600 New Jersey Avenue, NW  
Washington, DC 20001

June 13, 2021

The Honorable Elizabeth Hanes  
Spottswood W. Robinson III & Robert R. Merhige,  
Jr., U.S. Courthouse  
701 East Broad Street, 5th Floor  
Richmond, VA 23219

Dear Judge Hanes:

I write with enthusiasm in support of Trevor Rhodes's application for a clerkship in your chambers. Mr. Rhodes was the outstanding student in my Fall 2020 "Health Law & Policy" course, both for his exam performance and his consistently, deeply insightful contributions to class discussion. Across an array of complex questions of statutory interpretation, involving the Affordable Care Act, ERISA, and other legislative schemes bearing on health care provision and financing, he demonstrated a highly nuanced grasp of textual ambiguities and alternative approaches to resolving them.

More than that, he excelled at understanding the real-world problems to which these statutory and regulatory regimes speak. His command of course materials on the economics of medical care, the dilemmas posed by uncertainties about the efficacy of clinical tests and treatments, and myriad challenges that beset both market-oriented and regulatory approaches to solving health-policy problems was consistently outstanding.

Mr. Rhodes demonstrated, as well, an acute sensitivity to the human dimensions of legal disputes over health care – and legal conflict more generally. Passionate feelings over denial of access to potentially life-saving care, intense religious and moral differences over abortion and transgender identity, and health care providers' ire over intrusions by both government and corporate actors are among the forces that drive bitter conflict in the health sphere. One of Mr. Rhodes's remarkable gifts is his ability to empathize deeply with multiple perspectives – and to thereby grasp and frame arguments that reflect them.

He also excels at the work of marshalling and managing complex information. He sweats the details. Plus, he's well-organized, savvy, and skeptical when need be. He's not intimidated by technical or scientific expertise; to the contrary, he repeatedly demonstrated in class that he's able to understand economic and biomedical literature, spot flaws in advocates' reasoning from empirical studies, and uncover veiled moral and political premises. His biomedical engineering background empowers him not to be bamboozled by experts; it will, moreover, make him an invaluable asset in chambers when litigants invoke statistical and other scientific claims to press their cases.

He'll be an even greater asset in chambers because he's also steeped in current criminal justice issues. As Executive Editor of the Georgetown Law Journal Annual Review of Criminal Procedure, he's currently overseeing the Journal's coverage of a broad array of issues in this realm. And this past spring, he served as an intern in the Violent Crimes and Narcotics Trafficking Section of the U.S. Attorney's Office for the District of Columbia, where he participated in investigative interviews, drafted arguments for court filings, and otherwise gained front-line criminal-prosecution experience.

Mr. Rhodes, moreover, was a delight to have in class. When he challenged conventional wisdom and identified shortcomings in other's arguments, he did so with warmth, good humor, and respect for those with whom he differed. He brings out the best in others by treating all with caring and high regard. I'm confident that these inclinations will make him a pleasure to work with in chambers, even under highly pressured circumstances, in the most bitterly contested of cases.

That Mr. Rhodes can handle pressure and adversity with aplomb, indeed grace, has been demonstrated by an extraordinary aspect of his background – his resolve and raw grit in the face of a daunting disability, retinitis pigmentosa. This condition has diminished his eyesight but not his determination to excel. It has both enriched his empathy and shown his remarkable fortitude. To an extent that is rare among mid-twenty-somethings, he has been tested when it comes to courage and commitment. I'm in awe of his perseverance and outstanding academic and personal performance in the face of this challenge.

Hire Trevor Rhodes! He'll do you proud. He's going to be an extraordinary lawyer. And during his time in your chambers, he'll be of enormous value, for his remarkable combination of high intellect, exceptional dependability, understanding of technical and scientific matters, practical savvy, and extraordinary character.

Maxwell Bloche - bloche@georgetown.edu

M. Gregg Bloche

Carmack Waterhouse Professor of Health  
Law, Policy, and Ethics

Maxwell Bloche - bloche@georgetown.edu

Georgetown Law  
600 New Jersey Avenue, NW  
Washington, DC 20001

June 13, 2021

The Honorable Elizabeth Hanes  
Spottswood W. Robinson III & Robert R. Merhige,  
Jr., U.S. Courthouse  
701 East Broad Street, 5th Floor  
Richmond, VA 23219

Dear Judge Hanes:

I write to recommend Trevor Rhodes for a judicial clerkship. Mr. Rhodes will excel in this role.

Mr. Rhodes was a student in my Legal Practice class during his first year at Georgetown Law. Legal Practice is a year-long legal research and writing course, organized so that students research and write (and re-write, and re-write again) a number of increasingly complex assignments throughout the year. The Fall semester focuses on objective memoranda, while in the Spring we turn to persuasive advocacy. Throughout the year, I also include a number of smaller units designed to introduce students to other practical lawyering skills such as oral argument and writing for a variety of audiences.

Because Legal Practice is a year-long class, no grade is awarded until the end of the year, and because Georgetown switched to mandatory Pass/Fail in Spring 2020 (due to the pandemic), the only “grade” that I could award for the entire year was a “Pass” (or “Fail”). Mr. Rhodes, however, did far more than “pass” the class. His work was easily in the top fifteen of my fifty-two students on every measure. He paid close attention to both the bigger picture and the necessary details. Indeed, as to the latter measure, Mr. Rhodes had a perfect score on a test that I give to measure facility with citation, grammar, punctuation, and similar items.

Mr. Rhodes has seized additional opportunities to hone his research and writing skills, including as an Executive Editor of Georgetown’s Annual Review of Criminal Procedure. He has also pursued such opportunities in practice settings including legal intern positions with both the U.S. Department of Health and Human Services and the U.S. Attorney’s Office for the District of Columbia where he prepared both written and oral presentations of his legal research and evidentiary findings on a wide variety of topics

Mr. Rhodes’ success is all the more remarkable in light of his having a degenerative eye disease. At the beginning of his first semester, Mr. Rhodes contacted me directly to discuss the minor accommodations necessary for him to thrive in my classroom. I appreciated his forthrightness on the subject and that he arrived with logical and easily implemented solutions at the ready.

Mr. Rhodes’ disability had no discernible negative impact on his ability to produce top-level work in my (often quite difficult) class. Indeed, he brought a welcome diverse perspective to the discussion. Mr. Rhodes has more than risen to the challenge of his limited eyesight. The lessons that he has learned have resulted in skills that will be an asset in any workplace, including the discipline to listen closely and the creativity to solve whatever obstacles he may encounter.

Mr. Rhodes is motivated to pursue a judicial clerkship for several reasons. Top among them is Mr. Rhodes’ determination that, as a future litigator, a clerkship offers unparalleled opportunities to learn the system from the inside out. He also appreciates the opportunity for exposure to a wide variety of substantive areas—a particular advantage for someone like Mr. Rhodes with wide-ranging interests, spanning intellectual property, health law, and criminal law. Finally, Mr. Rhodes has worked hard at Georgetown, and he sees a clerkship as an excellent way to put all he has learned toward the public good.

I recommend Mr. Rhodes to you with no hesitation.

Sincerely,

Rima Sirota

Rima Sirota - rs367@law.georgetown.edu - (202) 353-7531

**SIDLEY**

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May 19, 2021

Re: Clerkship Recommendation for Trevor Rhodes

To Whom it May Concern:

I write to support Trevor Rhodes's application to serve as a law clerk.

Trevor was a student in my patent law class at Georgetown Law Center in the fall of 2020. That was, of course, in the midst of the pandemic, so classes were held only remotely. Yet, Trevor stood out as one of the more engaged and interested students in the class.

Trevor's performance in my patent law class ranks among the top few students of the past three years. He appears to have an inquisitive mind, a dedicated work ethic, and significant legal talent. I believe Trevor will do well as a law clerk. For example, in my class, each student is required to be "on call" for at least one three-hour class, meaning that student and two or three colleagues will have prime responsibility for responding to questions about that week's reading. During his turn, Trevor did quite well. I recall, for example, his showing a good understanding of the subtle differences between the doctrines of exhaustion and implied license. Trevor's ability to grasp and articulate such differences between complex legal theories suggests he will do well as a law clerk and, ultimately, as an attorney.

I understand Trevor grew up and worked on a farm when he was younger. Coming from that background, his biomedical engineering degree and success at Georgetown Law suggest a keen mind and a strong intellect. His grade in my class – an A, which is impressive, given the subject matter – confirms both.

I highly recommend Trevor for consideration as a law clerk, and am more than happy to discuss my recommendation.

Sincerely,



Joseph A. Micallef

Sidley Austin (DC) LLP is a Delaware limited liability partnership doing business as Sidley Austin LLP and practicing in affiliation with other Sidley Austin partnerships.

Trevor Rhodes

Writing Sample

September 17, 2020

I wrote this memorandum for my Legal Writing Class at Georgetown. My professor gave us a fact pattern describing a compilation of information called “Flagship.” We were to write a memorandum discussing whether “Flagship” was a trade secret. I only had five days to research relevant cases, analyze case law, and write the memorandum. My professor restricted my query to only Alabama case law and some specific cases were excluded. The word limit was 1350 words. Because of the short word limit, this memorandum contains no “Facts” section.

For context, CollegeRenter is a real estate company that buys and sells apartment buildings and leases apartments within those buildings. CollegeRenter developed an electronic database called “Flagship” which contains information about many apartment buildings. CollegeRenter uses Flagship to determine the value of a building and to set apartment rental rates. This memorandum discusses whether Flagship is a “trade secret” under Alabama law.

## MEMORANDUM

To: Law Firm

From: Trevor Rhodes

Date: November 20, 2019

Re: CollegeRenter—“Trade secret” status for “Flagship” compilation of information

### Question Presented

Under Alabama law, is CollegeRenter’s compilation of information, Flagship, a “trade secret”?

### Brief Answer

Flagship is likely a “trade secret” because all six elements are met. Flagship influences CollegeRenter’s purchases of buildings and thus is “used in a business.” Flagship is “embodied in a compilation” because it is compiled apartment building data. CollegeRenter developed Flagship itself and has not shared it with the public, likely rendering it not “publicly known” and not “generally known in the trade.” Flagship is likely “not readily ascertainable” from public information because CollegeRenter spent two years gathering the information. Password protecting and labeling Flagship confidential, among other precautions, are likely “reasonable efforts” to protect its secrecy. Flagship is the main reason for CollegeRenter’s success, therefore having “significant economic value.”

### Discussion

Information is a “trade secret” when it is (1) “used in a business,” (2) “embodied in a compilation,” (3) “not publicly known and not generally known in the trade,” (4) “not readily ascertainable” from public information, (5) the subject of “reasonable efforts” in the circumstances to keep the information secret, and (6) of “significant economic value.” Ala. Code

§ 8-27-2(1) (2019). Flagship identifies which buildings CollegeRenter should purchase, meeting the first element. Flagship is a compilation of information from thousands of apartments, meeting the second element. Additionally, Flagship has “significant economic value” because it is crucial to the company’s success.

However, whether the third, fourth, and fifth elements are met is less clear, so these elements are analyzed below. First, this memo explains that Flagship is likely “not publicly known and not generally known in the trade.” Second, this memo explains that Flagship is likely “not readily ascertainable from public information.” Lastly, this memo explains that CollegeRenter’s attempts to keep the information secret are very likely “reasonable efforts.”

### (3) Not Publicly Known and Not Generally Known in the Trade

Flagship is likely “not publicly known and not generally known in the trade.” Information meets this element if (1) specific parts of the information are unknown to the public and to those in the same trade as the holder; or (2) if those who know the complete information are partners in a joint venture. See, e.g., Ex parte W.L. Halsey Grocery Co., 897 So. 2d 1028, 1034 (Ala. 2004). If the information is not “generally known in the trade” it has also been considered not “publicly known.” See, e.g., id. The grocery’s “trade secret” was a compilation of its customer and general business information into one document. Id. Although a competitor could determine some of the information, because “the average businessman in the grocery store trade will not know” all the information, the information was not “generally known in the trade.” Id. Customer lists were not “generally known in the trade” because the information was created and developed by Movie Gallery and was specific to its clients and customers. Movie Gallery US, LLC v. Greenshields, 658 F. Supp. 2d 1252, 1263-64 (M.D. Ala. 2009). Delta Machinery shared its flesh-sensing technology with four other companies who were its partners in a joint venture; the technology

remained “not known generally in the trade.” Ex parte Delta Int’l Mach. Corp., 75 So. 3d 1173, 1180 (Ala. 2011).

No evidence exists showing all of Flagship is known by anyone other than those in CollegeRenter and Saban’s Real Estate (Saban’s). Because Flagship is more comprehensive than the compilations of competitors, it must contain more information. Like the document in W.L. Halsey, because *all* the information is not known by competitors, Flagship is not “generally known in the trade.” See 897 So. 2d at 1034. Flagship was also compiled by CollegeRenter and contains many details about the company’s business (apartment buildings). Therefore, like the information in Movie Gallery, this information is not “generally known.” See 658 F. Supp. 2d at 1264. CollegeRenter grants Saban’s, a partner in a joint venture, access to Flagship. Like in Delta, this does not affect whether the information is “generally known in the trade.” See 75 So. 3d at 1180.

#### (4) Not Readily Ascertainable

Flagship is likely “not readily ascertainable” from public information. This element is met if specific parts of the information are not available to the public, or if “substantial resources” were invested acquiring the information. See, e.g., Pub. Sys., Inc. v. Towry, 587 So. 2d 969, 972-73 (Ala. 1991). In Delta, much of the flesh-sensing technology was exposed in legal trials and patents. 75 So. 3d at 1180. Because some parts of the information were not public, the information was “not ascertainable” from public information. Id.

No cases available held information was “not readily ascertainable” based solely on the efforts required to obtain the information. In all cases at least some information has been unavailable to the public. E.g., 658 F. Supp. 2d at 1264 (holding that if a competitor obtained information from hundreds of stores over thousands of miles, some information would still not

be available because it was subject to confidentiality agreements). However, this element's purpose was to prevent information from being "trade secrets" that was available to the public and did not require "substantial time" to obtain. Section 8-27-2 Comment. Also, some cases infer that if a company invested "substantial time" obtaining information, it is "not readily ascertainable." In Public Systems, a data program containing publicly available information was "readily ascertainable" because the company spent several years *determining* what information *to obtain*, instead of actually *obtaining* information. 587 So. 2d at 972-73. Therefore, if the company had spent "substantial time" gathering the information, it likely would have been "not readily ascertainable." See id.

Because Bonner, CollegeRenter's CEO, admits that the information in Flagship is obtainable by anyone, whether it is "not readily ascertainable" depends on whether a court would find that it took "substantial time" to gather the information. Flagship was developed in two years and requires three researchers to keep the information current. It contains approximately twenty-five data points on 10,000 properties. Although we have no indication from the courts what is "substantial time," such a vast investment would likely be enough. This investment is likely greater than that required in Movie Gallery for a competitor, traveling thousands of miles to hundreds of stores, to obtain customer lists. 658 F. Supp. 2d at 1264. Again, all information on those customer lists was not available if competitors went to the stores, so "substantial time" was not the sole reason the lists were "not readily ascertainable." Id.

#### (5) Reasonable Efforts

CollegeRenter very likely used "reasonable efforts" in the circumstances to keep Flagship secret. This element is met if the holder limits access to the information, informs those with access of its confidentiality, and requires those with access outside of the business to sign

confidentiality agreements. See, e.g., 897 So. 2d at 1035. Password protecting computers containing the “trade secret” and marking the information as “confidential” were “reasonable efforts.” Unisource Worldwide, Inc. v. S. Cent. Ala. Supply, LLC, 199 F. Supp. 2d 1194, 1210 (M.D. Ala. 2001), Entering into confidentiality agreements with joint venture partners who had access to the “trade secret” were “reasonable efforts.” 75 So. 3d at 1180.

Like the company protecting secrets in Unisource Worldwide, CollegeRenter limits access to its information by password protecting its computers and informs those with access of its confidentiality by marking Flagship “confidential.” Id. Additionally, CollegeRenter grants regular access to only six employees, although three more employees have accessed the information in the past three years. However, the number of employees that have accessed the information is not dispositive of “reasonable efforts.” See Ex parte Indus. Warehouse Servs., Inc., 262 So. 3d 1180, 1185-87 (Ala. 2018) (holding that the bills of lading were “trade secrets” even though IWS shared the information with its employees). Like Delta Machinery, CollegeRenter required its partner, Saban’s, to sign a confidentiality agreement. 75 So .3d at 1180.

**Applicant Details**

First Name **Timothy**  
 Middle Initial **A**  
 Last Name **Richard**  
 Citizenship Status **U. S. Citizen**  
 Email Address [richardt@cua.edu](mailto:richardt@cua.edu)  
 Address

**Address****Street****6375 Boulder Trail Dr., Apt. 2085****City****Roanoke****State/Territory****Virginia****Zip****24019****Country****United States**

Contact Phone  
 Number **7577713807**

**Applicant Education**

BA/BS From **Christopher Newport University**  
 Date of BA/BS **May 2017**  
 JD/LLB From **The Catholic University of America, Columbus School of Law**  
[http://www.nalplawschoolsonline.org/ndlsdir\\_search\\_results.asp?lscd=50903&yr=2009](http://www.nalplawschoolsonline.org/ndlsdir_search_results.asp?lscd=50903&yr=2009)  
 Date of JD/LLB **May 20, 2022**  
 Class Rank **25%**  
 Law Review/Journal **Yes**  
 Journal(s) **The Catholic University Law Review**  
 Moot Court Experience **Yes**  
 Moot Court Name(s) **Giles S. Rich Memorial Moot Court Competition**  
**Ellen A. Hennessy Employee Benefits Moot Court Competition**

## Bar Admission

## Prior Judicial Experience

Judicial  
Internships/       **Yes**  
Externships  
Post-graduate  
Judicial Law       **Yes**  
Clerk

## Specialized Work Experience

Specialized Work  
Experience       **Patent**

## Professional Organization

Organizations       **Giles S. Rich American Inn of Court**

## Recommenders

Winston, Elizabeth  
WinstonE@law.edu  
202-319-5158

## References

Judge Ryan T. Holte, U.S. Court of Federal Claims. Phone: (202)  
357-6492 Email: Holte\_chambers@cfc.uscourts.gov

William Atkins, Pillsbury Winthrop Shaw Pittman LLP  
Phone: (703) 770-7777 Email: william.atkins@pillsburylaw.com

**This applicant has certified that all data entered in this profile and  
any application documents are true and correct.**

9707 Forest Grove Dr.  
Silver Spring, MD 20910

May 11, 2021

The Honorable Elizabeth W. Hanes  
Magistrate Judge  
United States District Court  
Eastern District of Virginia  
701 E. Broad St.  
Richmond, VA 23219

Dear Judge Hanes,

I am a rising third-year law student at The Catholic University of America, Columbus School of Law and Managing Editor of *The Catholic University Law Review*. I am writing to apply for a 2022-2024 clerkship in your chambers.

I am particularly interested in a clerkship with you because of the diverse nature of a magistrate docket and the opportunity to assist on a variety of procedural and evidentiary matters across such a wide array of legal issues. I am also interested in the opportunity to return to Richmond as it is close to family and my significant other, as well as where I intend to practice.

Enclosed please find my resume, law school transcripts, undergraduate transcripts, and writing sample. The writing sample is an excerpt, taken with permission, from an order I drafted while interning with Judge Ryan T. Holte of the U.S. Court of Federal Claims. Also enclosed are letters of recommendation from Professor Elizabeth Winston and Professor Megan La Belle.

Thank you for your time and consideration. Please let me know if there is any additional information I can provide to you.

Respectfully,

Timothy A. Richard

## TIMOTHY A. RICHARD

9707 Forest Grove Dr., Silver Spring, MD 20910 • richardt@cua.edu • 757-771-3807

### EDUCATION

**The Catholic University of America, Columbus School of Law**, Washington, D.C.

Juris Doctor (J.D.), Certificate from Law and Technology Institute, expected May 2022 (*Patent Bar Eligible*)

GPA: 3.560      Class Rank: 25/97

Honors:      *The Catholic University Law Review*, Managing Editor; USPTO Patent Drafting Competition, Regional Finalist; Giles S. Rich American Inn of Court, Pupil Member; Ellen A. Hennessy Moot Court Competition, Semi-Finalist; Outstanding First Year Law Student Award; Outstanding Second Year Law Student Award

Activities:      Student Bar Association, Vice President of External Affairs; Law & Technology Student Association, Member; Moot Court Association, Vice Chancellor of the Ellen A. Hennessy Moot Court Competition

**Christopher Newport University**, Newport News, Virginia

Bachelor of Science (B.S.) in Biochemistry, Minors in Leadership Studies and Political Science, May 2017

Honors:      Service Distinction; Dean's Service Award Finalist || Volunteer Work: Fear2Freedom (400+ Hours)

Activities:      President's Leadership Program; Office of Admission Student Ambassador; Marching Band

### PROFESSIONAL EXPERIENCE

**Pillsbury Winthrop Shaw Pittman LLP**, Tysons Corner, Virginia

*Law Clerk-PTAB Handbook*, February 2021–Present

- Research public opinions issued by the PTAB at various stages of Inter Partes Review
- Analyze and document precedent and trends in PTAB opinions
- Draft and edit sections of the *PTAB Handbook*

**The United States Court of Federal Claims**, Washington, D.C.

*Judicial Extern for the Honorable Ryan T. Holte*, August 2020–December 2020

- Researched issues involving patent claim construction and infringement, Fifth Amendment takings, IRS tax refund disputes, jurisdictional disputes and draft memoranda advising judge regarding questions of law
- Analyzed parties' arguments and their weight with respect to mandatory authority
- Drafted preliminary court orders and opinions

**Newport News Commonwealth Attorney's Office**, Newport News, Virginia

*Legal Intern*, May 2020–August 2020

- Conducted legal research on criminal law issues and drafted briefs, motions, and reply motions
- Prepared memoranda advising attorneys on the appropriateness of various charges and strategies

**CoStar Group, Inc.**, Richmond, Virginia

*Research Associate*, June 2017–July 2019

- Interviewed commercial real estate professionals to collect data for real estate inventory
- Conducted regular team trainings regarding commercial real estate topics and internal research methodology
- Authored quarterly reports utilized by commercial real estate professionals to identify market trends

**Commonwealth of Virginia, Office of the Governor**, Richmond, Virginia

*Governor's Fellow for Agriculture and Forestry*, June 2016–July 2016

- Researched agriculture policy initiatives regarding economic development projects
- Authored briefs and legislative amendments for Governor and Cabinet Members

**U.S. House Representatives, Office of Congressman Rob Wittman**, Washington, D.C.

*Intern*, June 2015–July 2015

- Drafted memoranda in support of legislative priorities
- Managed constituent services, including call logs, written correspondence, and greeting visitors to the office

**Interests:** Stand-up Comedy, Musical Theater, Travel, Photography



Unofficial Transcript

Name: Timothy Richard  
Student ID: 5178843

Birthdate: 12/28  
Print Date: 06/02/2021  
Send To:

Beginning of Law Record

Fall 2019 (08/19/2019-12/18/2019)

Program: School of Law  
Major: Law (JD)

Course	Description	Attempted	Earned	Grade	Points
LAW 101	Lawyering Skills Instructor: Laurie A. Lewis	2.000	2.000	B+	6.660
LAW 107	Civil Procedure Instructor: Megan M. LaBelle	3.000	3.000	B+	9.990
LAW 119	Contracts Instructor: Elizabeth I. Winston	3.000	3.000	A-	11.010
LAW 129	Criminal Law Instructor: Mary G. Leary	3.000	3.000	B+	9.990
LAW 138	Torts Instructor: Marin R. Scordato	4.000	4.000	A	16.000
LAW 291	Legal Methods Workshop Instructor: Katherine G. Crowley Instructor: Bryan Jonathan McDermott	1.000	1.000	P	0.000

		Attempted	Earned	GPA Units	Points
Term GPA	3.577 Term Totals	16.000	16.000	15.000	53.650
Transfer Term GPA	Transfer/Test/Other Totals	0.000	0.000	0.000	0.000
Combined GPA	3.577 Combined Totals	16.000	16.000	15.000	53.650
		Attempted	Earned	GPA Units	Points
Cum GPA	3.577 Cum Totals	16.000	16.000	15.000	53.650
Transfer Cum GPA	Transfer/Test/Other Totals	0.000	0.000	0.000	0.000
Combined Cum GPA	3.577 Combined Totals	16.000	16.000	15.000	53.650

Spring 2020 (01/06/2020-05/11/2020)

Program: School of Law  
Major: Law (JD)

Course	Description	Attempted	Earned	Grade	Points
LAW 102	Lawyering Skills II Instructor: Laurie A. Lewis	2.000	2.000	A	8.000
LAW 107B	Civil Procedure Instructor: Megan M. LaBelle	3.000	3.000	B+	9.990
LAW 114	Constitutional Law I Instructor: Mark L. Rienzi	3.000	3.000	A-	11.010
LAW 120	Contracts Instructor: Elizabeth I. Winston	3.000	3.000	A-	11.010
LAW 132	Property Instructor: Lucia Ann Silecchia	4.000	4.000	B+	13.320

		Attempted	Earned	GPA Units	Points
Term GPA	3.555 Term Totals	15.000	15.000	15.000	53.330
Transfer Term GPA	Transfer/Test/Other Totals	0.000	0.000	0.000	0.000
Combined GPA	3.555 Combined Totals	15.000	15.000	15.000	53.330
		Attempted	Earned	GPA Units	Points
Cum GPA	3.566 Cum Totals	31.000	31.000	30.000	106.980
Transfer Cum GPA	Transfer/Test/Other Totals	0.000	0.000	0.000	0.000
Combined Cum GPA	3.566 Combined Totals	31.000	31.000	30.000	106.980

Fall 2020 (08/24/2020-12/21/2020)

Program: School of Law  
Major: Law (JD)

Course	Description	Attempted	Earned	Grade	Points
LAW 421	Professional Responsibility Instructor: Lisa Anjou Everhart	3.000	3.000	B+	9.990
LAW 496	Cyberlaw Instructor: Christopher W. Savage	3.000	3.000	B	9.000
LAW 604	Constitutional Law II Instructor: Mark L. Rienzi	3.000	3.000	A-	11.010
LAW 927B	Becoming a Lawyer Instructor: Bryan Jonathan McDermott	1.000	1.000	P	0.000
LAW 927D	Legal Externship Instructor: Bryan Jonathan McDermott	3.000	3.000	P	0.000
LAW 953	Law Journal Wr (Law Review) Instructor: Alonzo G. Harmon	2.000	2.000	P	0.000



Unofficial Transcript

Name: Timothy Richard  
Student ID: 5178843

Fall 2021 (08/23/2021-12/20/2021)													
Term GPA		3.333	Term Totals	15.000	15.000	9.000	30.000	Program: School of Law					
Transfer Term GPA			Transfer/Test/Other Totals	0.000	0.000	0.000	0.000	Major: Law (JD)					
Combined GPA		3.333	Combined Totals	15.000	15.000	9.000	30.000	Course	Description	Attempted	Earned	Grade	Points
								LAW 241	Trusts & Estates	4.000	0.000		0.000
								LAW 454	Instructor: Lucia Ann Silecchia				
								LAW 519	Crim Pro:The Investigative Pro	3.000	0.000		0.000
Cum GPA		3.512	Cum Totals	46.000	46.000	39.000	136.980	LAW 595	Instructor: James Dietrich	2.000	0.000		0.000
Transfer Cum GPA			Transfer/Test/Other Totals	0.000	0.000	0.000	0.000	LAW 633	Instructor: Stephen C. Carlin	3.000	0.000		0.000
Combined Cum GPA		3.512	Combined Totals	46.000	46.000	39.000	136.980	LAW 941	Trial Practice	2.000	0.000		0.000
									Instructor: Daniel F. Atridge	2.000	0.000		0.000
									Federal Courts	2.000	0.000		0.000
									Directed Research	2.000	0.000		0.000
Spring 2021 (01/04/2021-05/10/2021)													
Program: School of Law													
Major: Law (JD)													
Course	Description	Attempted	Earned	Grade	Points	Law Career Totals							
LAW 201	Administrative Law	3.000	3.000	A-	11.010	Cum GPA:	3.560	Cum Totals	62.000	62.000	53.000	188.660	
LAW 223	Instructor: Megan M. LaBelle	4.000	4.000	A-	14.680	Transfer Cum GPA		Transfer/Test/Other Totals	0.000	0.000	0.000	0.000	
LAW 482	Evidence	3.000	3.000	B+	9.990	Combined Cum GPA	3.560	Combined Totals	62.000	62.000	53.000	188.660	
LAW 570	Instructor: Mary G. Leary	3.000	3.000	B+	9.990								
LAW 625A	Remedies	3.000	3.000	A	12.000								
LAW 989L	Instructor: Elizabeth I. Winston	3.000	3.000	A	12.000								
	Trademark & Unfair Competition	1.000	1.000	A	4.000								
	Instructor: Elizabeth I. Winston	1.000	1.000	A	4.000								
	Justice Scalia's Textualism	2.000	2.000	P	0.000								
	Instructor: Michael Kenneally	2.000	2.000	P	0.000								
	Instructor: Bryan Killian	2.000	2.000	P	0.000								
	Moot Court: ERISA	2.000	2.000	P	0.000								
		Attempted	Earned	GPA	Units								
Term GPA	3.691	Term Totals	16.000	16.000	14.000	51.680							
Transfer Term GPA		Transfer/Test/Other Totals	0.000	0.000	0.000	0.000							
Combined GPA	3.691	Combined Totals	16.000	16.000	14.000	51.680							
		Attempted	Earned	GPA	Units								
Cum GPA	3.560	Cum Totals	62.000	62.000	53.000	188.660							
Transfer Cum GPA		Transfer/Test/Other Totals	0.000	0.000	0.000	0.000							
Combined Cum GPA	3.560	Combined Totals	62.000	62.000	53.000	188.660							

End of Unofficial Transcript

## OFFICIAL ACADEMIC DOCUMENT

CHRISTOPHER NEWPORT  
UNIVERSITY

1 Avenue of the Arts Newport News VA 23606 Telephone (757) 594-7155 Fax (757) 594-7711

## Academic Transcript

Record of: Timothy Armando Richard  
 Student ID: 00886435  
 Birthdate: 28-DEC-1994  
 Level: Undergraduate  
 Date Issued: 16-SEP-2020

## Current Program

Major : Biochemistry  
 Minor : Leadership Studies  
 Political Science

Degrees Awarded Bachelor of Science 13-MAY-2017  
 Primary Degree

Major : Biochemistry  
 Minor : Leadership Studies  
 Political Science

## Issued To:

Timothy A. Richard  
 9707 Forest Grove Dr  
 Silver Spring, MD 20910-1413

SUBJ NO	COURSE TITLE	CRED GRD	PTS	SUBJ NO	COURSE TITLE	CRED GRD	PTS
TRANSFER CREDIT ACCEPTED BY THE INSTITUTION:				Institution Information continued:			
SP13	AP Credit			ENGL 123	First-Year Writing Seminar	3.00 B	9.00
CHEM 103	Introductory Chemistry	3.00 T		LDSP 230	Leadership Through the Ages	3.00 B	9.00
CHEM 103L	Introductory Chemistry Lab	1.00 T		MATH 140	Calculus and Analytic Geometry	4.00 C+	9.20
GOVT 101	Power and Politics in America	3.00 T		PMED 010	Pre-med Scholars Prgm Act I	0.00 P	0.00
HIST 121	Early America to the Civil War	3.00 T		SPAN 200	Eff Comm in Spanish	3.00 B-	8.10
HIST 1XX	History Elective	3.00 T		Ehrs: 17.00 GPA-Hrs: 17.00 QPts: 44.00 GPA: 2.58			
PSYC 201	Inv Biol Bases of Beh & Cogn	3.00 T		Good Standing			
Ehrs: 16.00 GPA-Hrs: 0.00 QPts: 0.00 GPA: 0.00				Fall Semester 2014			
INSTITUTION CREDIT:				CHEM 321	Organic Chemistry I	3.00 C	6.00
Fall Semester 2013				CHEM 321L	Organic Chemistry Lab I	1.00 B+	3.30
BIOL 211	Principles of Biology I	3.00 B+	9.90	LDSP 310	Leadership Theory and Research	3.00 C+	6.90
BIOL 211L	Principles of Biology I Lab	1.00 B+	3.30	MATH 240	Intermediate Calculus	0.00 W	0.00
CHEM 121	General Chemistry I	3.00 B+	9.90	MUSC 112	Marching Band	1.00 A	4.00
CHEM 121L	General Chemistry Lab I	1.00 A-	3.70	PHYS 201	General Physics	3.00 C+	6.90
CPSC 110	Introduction to Computing	3.00 B	9.00	PHYS 201L	General Physics Laboratory	1.00 B+	3.30
LDSP 210	Self, Group, and Leadership	3.00 A-	11.10	Ehrs: 12.00 GPA-Hrs: 12.00 QPts: 30.40 GPA: 2.53			
PMED 010	Pre-med Scholars Prgm Act I	0.00 P	0.00	Good Standing			
Ehrs: 14.00 GPA-Hrs: 14.00 QPts: 46.90 GPA: 3.35				Spring Semester 2015			
Good Standing				CHEM 322	Organic Chemistry II	3.00 D+	0.00
Spring Semester 2014				CHEM 322L	Organic Chemistry Lab II	1.00 B-	2.70
CHEM 122	General Chemistry II	3.00 C	6.00	ENGL 223	2nd Yr Writ Sem:Lit, Res, Writ	3.00 B	9.00
CHEM 122L	General Chemistry Lab II	1.00 B-	2.70	LDSP 386	Values Leadership	3.00 B	9.00
***** CONTINUED ON NEXT COLUMN *****				MATH 240	Intermediate Calculus	4.00 C	8.00
				PHYS 202	General Physics	3.00 C	6.00
				PHYS 202L	General Physics Laboratory	1.00 A	4.00
				Ehrs: 15.00 GPA-Hrs: 15.00 QPts: 38.70 GPA: 2.58			
				Good Standing			
				Fall Semester 2015			
				BCHM 414	Biochemistry I	3.00 C-	5.10
				BCHM 414L	Biochemistry I Lab	1.00 A-	3.70
				CHEM 341	Physical Chemistry I	3.00 C-	5.10
				CHEM 391	WI: Investigating Chemical Lit	3.00 C+	6.90
				***** CONTINUED ON PAGE 2 *****			



*J. Wait*  
 Julianna Wait  
 University Registrar

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ACADEMIC INFORMATION AND TRANSCRIPT GUIDE PRINTED ON THE REVERSE SIDE

## OFFICIAL ACADEMIC DOCUMENT



# CHRISTOPHER NEWPORT UNIVERSITY

1 Avenue of the Arts Newport News VA 23606 Telephone (757) 594-7155 Fax (757) 594-7711

## Academic Transcript

PAGE: 2

Record of: Timothy Armando Richard  
 Student ID: 00886435  
 Birthdate: 28-DEC-1994  
 Level: Undergraduate  
 Date Issued: 16-SEP-2020

SUBJ NO	COURSE TITLE	CRED GRD	PTS	SUBJ NO	COURSE TITLE	CRED GRD	PTS
Institution Information continued:				***** TRANSCRIPT TOTALS *****			
GOVT 344	The Presidency	3.00 B-	8.10	Earned Hrs	GPA Hrs	Points	GPA
LDSP 384	Leading Change	3.00 B	9.00	TOTAL INSTITUTION	119.00	119.00	344.00 2.89
MUSC 112	Marching Band	1.00 A	4.00 I	TOTAL TRANSFER	16.00	0.00	0.00 0.00
Ehrs: 17.00 GPA-Hrs: 17.00 Qpts: 41.90 GPA: 2.46				OVERALL	135.00	119.00	344.00 2.89
Good Standing				***** END OF TRANSCRIPT *****			
Spring Semester 2016							
AMST 100	The American Experiment	3.00 A	12.00				
BCHM 415	Biochemistry II	3.00 C	6.00				
BCHM 415L	Biochemistry II Lab	1.00 B	3.00				
BIOL 313	Genetics	3.00 A-	11.10				
CHEM 361	Analytical Chemistry	3.00 B-	8.10				
CHEM 361L	Analytical Chemistry Lab	1.00 A	4.00				
LDSP 491	WI: Leadership Internship Sem	3.00 A	12.00				
MUSC 123	Pep Band	1.00 A	4.00				
Ehrs: 18.00 GPA-Hrs: 18.00 Qpts: 60.20 GPA: 3.34							
Good Standing							
Fall Semester 2016							
BIOL 307	Cell Biology	3.00 B-	8.10				
CHEM 322	Organic Chemistry II	3.00 B	9.00 I				
GOVT 215	Comptrv & Intl Politics	3.00 B+	9.90				
MUSC 112	Marching Band	1.00 A	4.00 I				
SOCL 201	Globalization and Society	3.00 A	12.00				
Ehrs: 13.00 GPA-Hrs: 13.00 Qpts: 43.00 GPA: 3.30							
Good Standing							
Spring Semester 2017							
BIOL 301	Microbiology	4.00 C	8.00				
BIOL 301L	Microbiology Laboratory	0.00 Z	0.00				
GOVT 202	State and Local Government	3.00 A	12.00				
GOVT 316	Constitutional Law	3.00 B+	9.90				
GOVT 338	Polit of Weapons Proliferation	3.00 B	9.00				
Ehrs: 13.00 GPA-Hrs: 13.00 Qpts: 38.90 GPA: 2.99							
Good Standing							
***** CONTINUED ON NEXT COLUMN *****							



*J. Wait*  
 Julianna Wait  
 University Registrar

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ACADEMIC INFORMATION AND TRANSCRIPT GUIDE PRINTED ON THE REVERSE SIDE

May 26, 2021

The Honorable Elizabeth Hanes  
Spottswood W. Robinson III & Robert R. Merhige,  
Jr., U.S. Courthouse  
701 East Broad Street, 5th Floor  
Richmond, VA 23219

Dear Judge Hanes:

I am writing to recommend Timothy Richard for a clerkship in your chambers.

Mr. Richard is an **outstanding** candidate for a clerkship upon graduation – possessing solid analytical skills, a strong work ethic and a terrific personality. Below, I offer details in support of this general recommendation.

I have come to know Mr. Richard well, having had him as a student for several classes. He was a student of mine in Contracts, Remedies and Trademarks and Unfair Competition. In addition, he has been involved in the Law and Technology Institute here at Catholic, of which I am the co-director.

**Mr. Richard has a strong work ethic.** Mr. Richard pays full attention and works extremely hard on the task at hand. He has managed to work part-time while going to school, and give his all to both work and school. He is respected in his classes. Mr. Richard prepared diligently for every class and asked interesting and insightful questions. His questions were presented with humor, and his perceptions made the entire class more enjoyable for all of us.

**Mr. Richard has solid analytical skills.** This can be seen from his success in law school as well as his range of positions that he has held outside of the classroom. He has applied himself outside the classroom, stretching his boundaries and trying new activities.

**Mr. Richard is a very personable student.** Mr. Richard has maintained deep friendships, and is well-liked at the law school. He is respectful, introspective, humorous and thoughtful, all interpersonal skills that I strongly believe help round out his impressive intellectual and professional achievements. He truly respects the knowledge and abilities of those he works with, and I am deeply impressed at his determination to learn from those around him. His professional interactions, such as I have seen, reflect this determination, good nature, and ability to succeed. This will translate well to a judicial clerkship, and to his interactions with other clerks, office staff, and, most importantly, the judge.

As a clerkship advisor I have had many talks with applicants over the years, and Mr. Richard stands out as **one of the best applicants I have seen**. I hope that this letter has provided some insights into Mr. Richard's application. If I can be of further assistance at any point during the selection process, please do not hesitate to contact me at (202) 319-5158. Thank you in advance for your consideration of Mr. Richard's application and this letter.

Sincerely,

Elizabeth Winston  
Associate Professor of Law and Co-Director of the Law and Technology Institute  
The Catholic University of America, Columbus School of Law

Elizabeth Winston - WinstonE@law.edu - 202-319-5158

## MEMORANDUM

---

**TO:** The Honorable Elizabeth W. Hanes  
**FROM:** Timothy A. Richard  
**RE:** *Writing Sample*  
**DATE:** May 11, 2021

---

The below excerpt is taken, with permission, from a public order issued during my externship with Judge Ryan T. Holte of the U.S. Court of Federal Claims. It was written to assist the court in granting a 12(b)(1) Motion to Dismiss for Lack of Subject Matter Jurisdiction. The below sample has been redacted to ensure confidentiality of the parties.

---

## II. Background

[This case was filed by an inmate incarcerated in a state prison. The inmate alleges abuse and neglect by state prison officials and employees. He seeks conditional release from prison and relief under 42 U.S.C. § 233.]

## III. Discussion

The government moves to dismiss plaintiff’s complaint pursuant to RCFC 12(b)(1). *See* Def’s Mot. at 1. The government argues this court lacks subject matter jurisdiction because “[t]he Court of Federal Claims is a court of limited jurisdiction, and . . . ‘the *only* proper defendant . . . is the United States.’” *Id.* (quoting *Stephenson v. United States*, 58 Fed. Cl. 186, 190 (2003) (emphasis in the original)). The government further argues plaintiff’s “complaint names only [xx] state officials and employees” and thus must be dismissed. *Id.* at 2.

### A. Subject-Matter Jurisdiction

In considering a motion to dismiss for lack of subject-matter jurisdiction, “a judge must accept as true all of the factual allegations contained in the complaint.” *Erickson v. Pardus*, 551 U.S. 89, 94 (2007); *see also Trusted Integration, Inc. v. United States*, 659 F.3d 1159, 1163 (Fed. Cir. 2011) (“In determining jurisdiction, a court must accept as true all undisputed facts asserted in the plaintiff’s complaint and draw all reasonable inferences in favor of the plaintiff.”).

*- Taken with Permission -*

Plaintiff “bears the burden of establishing subject matter jurisdiction by a preponderance of the evidence.” *Reynolds v. Army and Air Force Exchange Serv.*, 846 F.2d 746, 748 (Fed. Cir. 1988).

“If the court finds that it lacks jurisdiction over the subject matter, it must dismiss the claim.”

*Matthews v. United States*, 72 Fed. Cl. 274, 278 (2006).

“The jurisdiction of the [Court of Federal Claims] is limited to suits against the United States.” *McGrath v. United States*, 85 Fed. Cl. 769, 772 (2009) (citing *United States v. Sherwood*, 312 U.S. 584, 588 (1941)); see *Brown v. United States*, 105 F.3d 621, 624 (Fed. Cir. 1997) (“the Court of Federal Claims [has] jurisdiction over suits against the United States, not against individual federal officials); *Stephenson v. United States*, 58 Fed. Cl. 186, 190 (2003) (“the *only* proper defendant for any matter before this [C]ourt is the United States, not its officers, nor any other individual.”). Further, this Court “lacks jurisdiction over . . . claims against states, localities, state and local government officials, state courts, *state prisons, or state employees.*” *Treviño v. United States*, 557 Fed. Appx. 995, 998 (Fed. Cir. 2014) (emphasis added); see *Curry v. United States*, 787 Fed. Appx. 720, 722-23 (Fed. Cir. 2019) (citing *Treviño*, 557 Fed. Appx. at 998) (finding the Court of Federal Claims lacks jurisdiction to hear cases against local law enforcement agencies); *Allen v. United States*, 145 Fed. Cl. 390, 396 (2019) (“It is well established that this court lacks jurisdiction over claims against state agencies or individuals.”); *Reid v. United States*, 95 Fed. Cl. 243, 248 (2010) (“When a plaintiff’s complaint names . . . local, county, or state agencies, rather than federal agencies, [the Court of Federal Claims] has no jurisdiction to hear those allegations.”); *Kennedy v. United States*, 19 Cl. Ct. 69, 75 (1989) (“if the relief sought is against others than the United States, the suit as to them must be ignored as beyond the jurisdiction of the Court.”). Due to the Court’s limited jurisdiction all claims brought against any party besides the United States fall outside the Court’s limited

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jurisdiction. *Darling v. United States*, No. 18-848C, 2018 WL 6322138, at \*4 (Fed. Cl. Nov. 30, 2018); *United States v. Sherwood*, 312 U.S. 584, 588 (1941) (citations omitted) (“if the relief sought is against others than the United States the suit as to them must be ignored as beyond the jurisdiction of the court”).

The ability of the Court of Federal Claims to entertain suits against the United States is limited, and the waiver of immunity “may not be inferred, but must be ‘unequivocally expressed.’” *United States v. White Mountain Apache Tribe*, 537 U.S. 465, 472 (2003) (quoting *United States v. Mitchell*, 445 U.S. 535, 538 (1980)). The Tucker Act grants this Court jurisdiction over “any claim against the United States founded either upon the Constitution, or any Act of Congress or any regulation of an executive department, or upon any express or implied contract with the United States, or for liquidated or unliquidated damages in cases not sounding in tort.” 28 U.S.C. § 1491(a)(1). “[T]he Tucker Act plainly excludes tort claims from this Court’s jurisdiction.” *Fields v. United States*, 141 Fed. Cl. 628, 631 (2019) (citing 28 U.S.C. § 1491(a)(1)). “The Tucker act . . . is itself only a jurisdictional statute; it does not create any substantive right enforceable against the United States for money damages. . . . [T]he Act merely confers jurisdiction upon it whenever the substantive right exists.” *United States v. Testan*, 424 U.S. 392, 398 (1976).

#### IV. Analysis

##### A. Jurisdiction Over the Defendants Named in the Suit

Plaintiff alleges systematic, discriminatory, and retaliatory abuse and neglect by [xx] Department of Corrections employees. Compl. at 1.

This Court’s jurisdiction “is limited to suits against the United States.” *McGrath*, 85 Fed. Cl. at 772 (2009) (citing *United States v. Sherwood*, 312 U.S. 584, 588 (1941)). Since the

*- Taken with Permission -*

Court’s jurisdiction is limited to a single defendant this Court “lacks jurisdiction over . . . claims against states, localities, state and local government officials, state courts, *state prisons, or state employees.*” *Treviño*, 557 Fed. Appx. at 998 (emphasis added). This Court must dismiss all claims brought against parties other than the United States for lack of jurisdiction. *See Sherwood*, 312 U.S. at 588; *Darling v. United States*, No. 18-848C, 2018 WL 6322138, at \*4 (Fed. Cl. Nov. 30, 2018).

Plaintiff only names [xx] Department of Corrections employees in his complaint and does not allege any claims against the United States. Compl. at 1. This Court can only hear claims against the United States. *See Sherwood*, 312 U.S. at 588. Therefore, since plaintiff’s claims are against state prison officials and employees, not the United States, the complaint must be dismissed under RCFC 12(b)(1) for lack of subject matter jurisdiction.

## **B. Jurisdiction Under 42 U.S.C. § 233**

Plaintiff argues he is entitled to relief under 42 U.S.C. § 233 because “[u]nder § 233, Congress provided expressly that [F]ederal Tort Claims . . . is an inmates ‘sole’ remedy for injuries caused by Public [H]ealth [S]ervices acting within the scope of their employment.”<sup>1</sup> Pl.’s Sur. at 1. Section 233(a) authorizes the Federal Tort Claims Act, 28 U.S.C. §§ 1346, 2671-2680 (“FTCA”), as the exclusive remedy for injuries caused by Public Health Service employees

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<sup>1</sup>Plaintiff argues [xx] Department of Corrections is a “federal employee, because it is federally funded, and is deemed a health center, and public entity” under 42 U.S.C. §§ 233(g)(1)(A), (2), (4), 254b. Pl.’s Sur. at 1. Section 233(g)(1)(A) deems any “employee of such an entity [receiving federal funds], . . . who is a physician or other *licensed or certified health care practitioner* . . . [is also] an employee of the Public Health Service for a calendar year that begins during a fiscal year for which” the entity receives public funds. § 233(g)(1) (emphasis added). For the purposes of § 233 the Secretary of Health and Human Services must certify an entity and its employees as “federal employees.” 42 U.S.C. §§ 233(g)(1)(D)-(E). A “health center” is defined as “an entity that serves a population that is medically underserved, or a special medically underserved population comprised of migratory and seasonal agricultural workers, the homeless, and residents of public housing.” 42 U.S.C. § 254b(a)(1). The Court expresses no opinion on [xx] Department of Corrections’ status as a “health center” or the status of [xx] Department of Corrections employees as “federal employees” for the purposes of § 233.

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in the scope of their employment. *See Hui v. Castaneda*, 559 U.S. 799, 802 (2010) (quoting 42 U.S.C. § 233(a)) (“Section 233(a) makes the FTCA [the exclusive] . . . remedy against the United States . . . for any personal injury caused by a [Public Health Service] officer or employee performing a medical or related function ‘while acting within the scope of his office or employment.’”).

“[T]ort cases are outside the jurisdiction of the Court of Federal Claims.” *Keene Corp. v. United States*, 508 U.S. 200, 214 (1993); *see Montano Elec. Contr. v. United States*, 60 Fed. Appx. 987, 990 (Fed. Cir. 2015) (finding FTCA cases are beyond the Court of Federal Claims jurisdiction); *Fields v. United States*, 141 Fed. Cl. 628, 631 (2019) (citing 28 U.S.C. § 1491(a)(1)) (“the Tucker Act plainly excludes tort claims from this Court’s jurisdiction.”); *Alves v. United States*, 133 F.3d 1454, 1459 (Fed. Cir. 1998) (finding FTCA claims necessarily sound in tort and thus are beyond the Court of Federal Claims jurisdiction); *Flippin v. United States*, 146 Fed. Cl. 179, 184 (2019) (“Because the [Court of Federal Claims] lacks subject-matter jurisdiction over FTCA claims, petitioner’s prospective claim is not cognizable in this court.”); *Bowling v. United States*, 95 Fed. Cl. 551, 557 (2010) (“The CFC has no subject matter jurisdiction over tort claims and therefore is unable to offer relief . . . under the FTCA.”). Since this Court lacks jurisdiction over FTCA claims the Court has no jurisdiction over § 233 claims. *See Gray v. United States*, 69 Fed. Cl. 95, 100 (2005) (holding the Court of Federal Claims lacks subject-matter jurisdiction over claims brought pursuant to 42 U.S.C. § 233).

Plaintiff’s exclusive remedy under § 233 is the FTCA. *See Hui v. Castaneda*, 559 U.S. at 802. This Court cannot hear claims sounding in tort. *See Montano Elec. Contr.*, 60 Fed. Appx. at 990. Since plaintiff’s exclusive remedy is beyond the jurisdiction of this Court the complaint must be dismissed under RCFC 12(b)(1) for lack of subject matter jurisdiction.

**Applicant Details**

First Name **William**  
 Middle Initial **F**  
 Last Name **Richardson**  
 Citizenship Status **U. S. Citizen**  
 Email Address [wfr2109@columbia.edu](mailto:wfr2109@columbia.edu)

Address

**Address**

Street

**520 West 122nd Street, Apt # 62A**

City

**New York**

State/Territory

**New York**

Zip

**10027**

Country

**United States**

Contact Phone Number **9193574828**

**Applicant Education**

BA/BS From **University of North Carolina-Chapel Hill**

Date of BA/BS **May 2017**

JD/LLB From **Columbia University School of Law**  
<http://www.law.columbia.edu>

Date of JD/LLB **May 18, 2022**

Class Rank **School does not rank**

Law Review/Journal **Yes**

Journal(s) **Columbia Business Law Journal**

Moot Court Experience **No**

**Bar Admission****Prior Judicial Experience**

Judicial Internships/  
Externships **No**

Post-graduate Judicial Law Clerk      **No**

### **Specialized Work Experience**

### **Recommenders**

McCrary, Justin  
jrm54@columbia.edu

Rakoff, Jed  
Jed\_S\_Rakoff@nysd.uscourts.gov

**This applicant has certified that all data entered in this profile and any application documents are true and correct.**